641.

SUPREME COURT OF THE UNITED STATES.

No. 126.

DANIEL H. LOWNSDALE, LEONARD HARRIS, *et al.*, App'ts.

vs.

JOSIAH L. PARRISH.

APPEAL FROM THE SUPREME COURT OF TERRITORY OF OREGON.

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Maps at end of record.

At a Supreme Court, begun and held at the Court Room in the village of Salem, in and for the Territory of Oregon, on the 5th day of December, viz: the year one thousand eight hundred and fifty-three, before

George H. Williams, Chief Justice.

Cyrus Olney and Obediah B. McFadden, Associate Justices, the following proceedings were had in

JOSIAH L. PARRISH, Complainant,

vs.

DANIEL H. LOWNSDALE, LEONARD HARRIS, THOMAS STEPHENS, ZACHARIAH C. NORTON and AMI P. DENNISON, merchants, under the name of NORTON & DENNISON, STEPHEN COFFIN, and WILLIAM W. CHAPMAN, Defendants.

In Chancery. Appeal. Washington County.

This cause came on to be heard upon the bill of complaint, and the several answers thereto, and the replications, exhibits and testimony, and was argued by counsel.

And the Court finds that Water street, in the said city of Portland, is bounded on the east by Willamette river, from block eight on the south, including the street on the south side of said block, to the claim of John H. Couch on the north; and that the defendants, at the commencement of this suit, were about to obstruct said street to the special injury of the plaintiff, as stated in the bill.

Therefore it is decreed, that the defendants and all persons claiming under any of them be, and they hereby are perpetually enjoined from erecting buildings upon, or otherwise obstructing the said street; and that the defendants, Stephen Coffin and Daniel H. Lownsdale, pay the costs of this suit in equal parts. And the Court does not think fit to order the removal at this time of the buildings in the said street; but the city is hereby authorized to petition the District Court for the benefit of this decree, and for further directions whenever such removal becomes necessary. And in the meantime the city may remove without such order all fences and obstructions, other than tenantable buildings, whenever the public convenience shall require it.

And afterwards, at a Supreme Court, begun and held at the Court Room in the city of Portland, in and for the Territory of Oregon, on the twelfth day of June, in the year one thousand eight hundred and fifty-four, before Hon's

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George H. Williams, Chief Justice,

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JOSIAH L. PARRISH, Complainant,
vs.
DANIEL H. LOWNSDALE *et al.*, Defendants.

Chancery. Appeal. Washington County. Motion for re-hearing.

Now this day came the said cause for re-hearing, upon bill and answer, and after argument by McCabe, for complainant, and Chinn, Hamilton and Campbell, for defendants, was submitted, for revision, to the consideration of the Court.

And afterwards, at said term, in

JOSIAH L. PARRISH, Complainant,
vs.
DANIEL H. LOWNSDALE *et al.*, Respondents.

Chancery. Appeal. Motion for re-hearing. Washington County.

And now this day, the Court being fully advised in the premises, it is ordered and adjudged that the judgment before rendered be in all respects affirmed, and that the decree heretofore entered upon the records of this Court be affirmed; and that the defendants, Stephen Coffin, Daniel H. Lownsdale and W. W. Chapman, pay the costs of this suit in equal parts, and that the said plaintiff have execution therefor, issuing out of this Court.

And afterwards, at a Supreme Court, begun and held at the Court Room, in the city of Portland, in and for the Territory of Oregon, on Monday, the ninth day of June, in the year one thousand eight hundred and fifty-six, before Hon's

George H. Williams, Chief Justice, and

Cyrus Olney and M. P. Deady, Associate Justices, the following proceedings were had in

JOSIAH L. PARRISH, Complainant,
vs.
DANIEL H. LOWNSDALE *et al.*, Defendants.

In Chancery. Appeal. Washington County.

Petition for allowance of Appeal to Supreme Court of the United States.

Now on this day came the said defendants, by their attorneys, and pray for an appeal in this case to the Supreme Court of the United States, and thereupon it was ordered, that an appeal as prayed for be allowed, and that defendant Dennison enter into a bond to complainant in the penal sum of five hundred dollars, with two sureties, to be approved by the Clerk of this Court, conditioned to prosecute their said appeal to effect, and answer all damages and costs, if they shall fail in and not make good their appeal.

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Opinions in Parrish vs. *Lownsdale et al.*

JOSIAH L. PARRISH, Plaintiff,
vs.
THOMAS STEPHENS *et als.*, Defendants.

Appeal from Washington County. December Term, 1853.

1. No particular length of time is necessary to establish an abandonment of land to the public.
2. It is sufficient if it be used by the public with the assent of the owner for such time that an interruption would be an injury. Each case depending on its own circumstances.

This is a suit in Chancery by the owner of property on Water Street, in Portland, to enjoin the proprietors of the town, and their vendees, from erecting buildings on the river bank, in front of the plaintiff's premises. The bill was filed in 1850, and an injunction allowed by Pratt, Justice; after which, the proprietors, particularly Coffin, as he states, set on foot a compromise with the citizens, whereby a portion of the levee was to be private property and the remainder a public way; and pending the negotiation, Coffin, and others claiming under the proprietors, erected valuable buildings on the disputed ground. The compromise failing, the parties revert to their original rights, and bring the title of the entire levee under adjudication.

The cause came on to be heard in the Washington District Court, and under a late statute has been adjourned into this court for decision. The record and depositions are too voluminous to be set forth; but the prominent facts, and the most material evidence, will be found in the opinion of the court.

Olney, Justice.—In 1845, F. W. Pettigrove and A. L. Lovejoy, as joint owners, laid out the town of Portland, and caused a plat to be made exhibiting blocks of lots, designated by numbers, with blank spaces between them, which coalesced with each other at their intersections, and with the surrounding blank spaces at the sides of the plat. Near the first row of blocks the Wallamette river is laid down at such a distance as to leave a narrow strip between, which, owing to the meanders of the river, is of variable width, being in some places narrower, and in others wider, than the blank spaces between the rows of blocks. The front row of blocks is, at the lower end, deflected from a right line, to conform to the bend of the river, by which means it continues of the same width as the intervals between the blocks, instead of narrowing to a point, as it otherwise would. The sizes of the lots and blocks, and the width of these several spaces, are not marked; nor is there any evidence on the face of the plat that the spaces were intended for streets, except that they form a connected net-work of open space among and in front of the blocks, making all the lots accessible from each other and from the river, which is here an arm of the sea, within the ebb and flow of the tide, and a resort for shipping.

Upon this strip of ground, between the river and the front row of blocks, the obstructions are being erected. The proprietors claim that the street in front does not cover the entire strip, but leaves a narrow margin along the bank, not dedicated to the public, and on which they have sold lots and erected buildings. Their right is contested by the citizens, who claim the entire strip as public ground; and whether it be public or private property is the question to be decided.

Upon the face of the plat there is the same evidence that this strip is a street, as that those spaces are streets which separate the rows of blocks. The cross streets terminate at its inner edge, and do not traverse it and terminate at the river; and if it be not a street, then the continuity of the streets is broken, and half the lots fronting on this strip are inaccessible without passing over private property. Indeed, it is admitted to be a street; end its eastern boundary alone is disputed. But the plat carries on its face no evidence of any other boundary than the river. As before stated, neither the width of the strip, nor the width of a street to be taken out of it, is stated; nor is any line drawn upon it, between the front lots and the water line of the river; nor is any other intimation given that the entire strip is not as much a street as the entire strip between any two rows of blocks. It is not unreasonably wide for the quay of a commercial town, but on the whole rather narrow for that purpose, being, in much of its extent, narrower, and but for a slight curve in the river would be nowhere wider than the ordinary streets of the town: And yet, from its location, it must necessarily be much more used than any other, for the carting of goods and for the ordinary uses of city streets, and besides, it must be the receptacle of all the goods imported and exported by the vessels resorting there. It is quite as important to the town proprietors, as to the individual lot holders and other citizens, that the loading and unloading of vessels, which confers upon the town its principal importance, should not be embarrassed by the caprice and avarice of private persons who might own the land adjacent to the water; and they appear, by the face of the plat, to have adopted, as reasonable men, the usual and proper means of guarding against this evil. That this street was intended to adjoin the river, and to form the connecting link between all the highways of the town and the great highway of water, upon which the town is dependent, is, therefore, both reasonable in itself, and apparent from the face of the plat.

The Supreme Court of the United States, in passing upon a similar case which arose in Pittsburg, appears to have considered such a plat sufficient proof that the street extended to the river. They say, "there is nothing on the plat which shows any limit to the width of Water street, short of the river on the south. If a line had been drawn around its southern limit, there would have been great force in the argument that the ground between such line and the water was reserved by the proprietors." *Barclay* vs. *Howell*,

6 Peters, 498. And the Wellsville case was decided the other way by the Supreme Court of Ohio, because there *was* such a line, as well as a natural boundary, namely; a precipitous bluff, along the brink, of which the outer line of the street was drawn upon the face of the plat. The street was bounded on the plat by two parallel straight lines, and in the open space between them was written "width 66 feet;" and the strip between this street, thus marked, and the river, from the top of the bluff to the water, was from 150 to 200 feet; nearly equal to a row of blocks in Portland. It was therefore evident from the plat and topography of the place, that the street was confined to the level ground on the top of the bluff; and there being no other evidence of dedication, but rather the contrary, the strip was held to be private property. *McLaughlin* vs. *Stephens*, 18 Ohio, 94. In Louisiana, where this subject assumed unusual importance from the widening of these quays by alluvial deposits, and where it has been thoroughly studied and discussed, such plats are considered sufficient evidence of dedication; and Chancellor Kent cites approvingly the opinion of Chief Justice Martin of that State; a jurist, venerable, as he says, for his age, learning and character—that when the plan of a city, fronting on a navigable river or the sea, has an open space between the front row of houses, or street, and the water, in public use, it becomes part of the port, without any other designation or evidence of dedication. 3 Kent, 428, note. This is precisely such a case—such a plat, such a strip, and such a public use of it. And if the case stood upon this alone, there would be very little danger of error in pronouncing in favor of the dedication.

Before dismissing the case as made by the plat, it is proper to notice a document which is relied on as a limitation of the street to a part only of this strip. Only a copy of the plat is in evidence admitted by both parties to be correct, except as enlarged by subsequent additions. The absence of the original which was made for the proprietors by Brown, the surveyor, is unaccounted for. The document referred to is upon a sheet exactly like that on which the plat is copied; and the back of the plat is placed against the face of the document; and the two are pasted together at the upper edge so as to appear like a single sheet, and so that the document, if its presence were suspected, or the duplication of the sheet discovered, is to be found by raising the plat at its lower edge. The document is in tabular form. The columns are headed, respectively, "To whom sold," "When sold," "No. of lot," "No. of block." In this tabular exhibit of sales one entry only is made, namely, "William Warren, January 1st, 1848, Lot 4, Block 27." As a caption, over the top of this table of sales, is written; "All lots are 50 by 100 feet. Water street, in front of blocks Nos. 4 and 5 is 30 feet wide, in front of blocks Nos. 1 and 8 is 60 feet wide. All other streets are 60 feet wide."

When and by whom this copy of the plat and this private docu-

ment were made, does not appear. The plat shows more than double the number of blocks originally laid off, all written in the same hand, with the same ink, and evidently at the same time, and must, therefore, have been prepared after those additions were made to the town. It contains the name of Stark, written in vacant blocks, as if to indicate a reservation, and must, therefore, have been made after he became a joint proprietor. And as the first sales were made in 1846, and the first and only entry in this table of sales is dated in 1848, it is probable the document was prepared about the latter date—some three years after the town was laid out, and when it had become the metropolis and emporium of the country, and the proprietors, as the evidence shows, had been importuned to sell lots on the river bank. If it had been made before that time, the first entry would have been of some prior sale. If this memorandum was not an after-though, why is it hid away where no one would look for it, or be likely to find it by accident, instead of being written on the plat, in the usual way, where an interpolation would be detected? And if it was likewise attached to the original plat, why has not that fact—the very fact on which the case might turn—been proved by the production of that plat, or by oral evidence after showing its loss? We get our first knowledge of this memorandum from the witness Hanner, who says, that in 1849 or 1850 Coffin showed him a map by which he discovered that the streets were 60 feet wide, leaving a fraction along the river, part of which he proposed to buy, but Coffin declined selling for the reason that he wished to leave in vacant for public use.

The witness Pettigrove, after looking at this copy, states the size of the lots and width of the streets to the same effect, except that Front street, as he calls it, is 30 or 35 feet wide in front of blocks 4 and 5; and he adds, "As will be seen by the original plat." But the absence of that original not being explained, its contents cannot be insinuated in this illegitimate, unsatisfactory and suspicious mode; and if it could, the memory of this witness, if not his veracity, would be an unsafe foundation for a solemn decree, as will presently be seen. All the other numerous witnesses, several of whom speak of the original plat, and most, if not all of whom must have been familiar with it, appear to be ignorant of such a memorandum. Hanner, to whom Coffin showed it, and Pettigrove, to whom it was shown on the witness' stand, both of whom might otherwise have been equally as ignorant, are the only witnesses who disclose a knowledge of its existence. If it had been generally known, and lots had been purchased and the town built up, with that knowledge, the fact could have been easily proved. The failure to prove it is equivalent to disproof when taken in connection with the recent date at which the memorandum apparently was made, and the strange place in which it is found concealed, and the seemingly prevalent ignorance of its existence. We think its binding effect upon the public is not established. And even if it were of binding obligation, the width of the

strip has not been proved; and the *inference* of Hanner, from a map shown him by Coffin, that a strip would remain after taking out the street, is not sufficient without an actual measurement. And furthermore, if such excess *were* found, it does not necessarily follow that it would be private property. The memorandum appears to be the statement of a descriptive fact—that the street, or strip, is of certain widths at certain detached places—rather than a term of limitation appropriating *so much* for street. The language is that *Water street is so wide at those places.* This is the statement of an existing fact, and may be true or false without changing the fact itself. Indeed, it is but a partial description, for it states the width in front of only half the original blocks. If it be construed as a dedication of so much ground, then it dedicates no ground in front of original blocks 2, 3, 6 and 7, and the five new blocks below, in front of which the strip is continuously marked. The ground dedicated would then be in three small detached parcels, and not a long continuous "water street." This descriptive memorandum, made subsequent to the act of laying off, marking and platting the blocks, lots and streets, is to be understood in the same sense in respect to all of them. If any *other* street were wider or narrower than described, surely the excess could not be added to, or the deficiency taken from, the adjacent lots; and if *lots* were found greater than described, surely the proprietors could not reclaim the excess. The streets and lots are *marked*, as well as their dimensions given. The boundaries of Water street, as marked, are the river on the one side, and the front lots on the other. If the quantity exceeds the description, the excess may as well be taken from one side as the other—as well next the lots as next the river. But the rule in all such cases is, that the land within the actual boundaries, and no more, passes by the deed or plat, or other conveyance, be it more or less than the quantity assumed. The grantor is neither allowed to reclaim an excess, nor required to make up a deficiency. This being a conveyance, not of *so wide a strip*, but of a *particular* strip, between marked boundaries, *described* as of certain widths at certain places, the memorandum containing that description must give way to, and cannot overrule, those boundaries if the two conflict. In no view that we can take of this document, therefore, can it affect the *prima facia* dedication appearing on the face of the plat.

But the documentary evidence is not the only, nor the principal, basis of the plaintiff's claim. He insists that the proprietors, in disregard of plats, lines, memorandums and dimensions, did, *in fact*, set off this ground for a street and levee; and he claims to have proved this by witnesses to the original act of dedication, and to the subsequent conduct and declarations of the proprietors, repeatedly reaffirming it, and to the general belief and expectation of the citizens, thereby knowingly and intentionally produced, and to their public and notorious use of the ground for the purpose of the dedication in pursuance of that belief. The following is the substance of the

testimony relied upon, so far as it relates to the acts and declarations of the original proprietors. Lovejoy laid out the town jointly with Pettigrove. Commenced near where the post office stood in 1852, and ran down the river to the claim line, allowing sufficient space for a street at the beginning and termination, running a straight line from point to point, without regard to the bend of the river. The front row of buildings is now on this line. "All from the street to the river was to remain as public property, open and free." Understood himself and Pettigrove to be perfectly agreed as to this. Warren—In negotiating for lots, objected to one on account of the slaughter-house on the river bank in front. Pettigrove replied it was there temporarily, and could be removed at any time; and he exhibited the original plat, and another with additions, on neither of which were any lots laid out in the strip; and he stated that he did not intend to sell any lots on the bank of the river, nor let buildings go up there. The citizens always claimed it as public, and it was commonly understood to be so. Heard Pettigrove say it was public. Stevens—Frequently conversed with Pettigrove about the strip. He always refused to sell lots in it, and said he intended it should remain open as a wharf. Has heard Pettigrove say, when offering to sell lots on this street, that they were valuable because the ground in front of them would be left open to the river. Ross—Heard Pettigrove say the strip was to remain open. Purchased lots with that understanding, which was general. Wilson—Was joint owner with Pettigrove of block one. It was common report that the river bank was public. Couch—Understood Pettigrove, whilst owner, to say the strip was public property. The lots on the west side of it were called *front* lots, by Pettigrove as well as others. Pettigrove—did not lay out the strip into lots. Does not remember having told any one it was public property, or that he so intended it. Might have said so when in a pet, or under the influence of intoxicating drink. Lots, 50 by 100 feet. Streets, 60 feet, except *Front* Street, opposite blocks 4 and 5, where it is some 30 or 35 feet, as will be seen by the original plat. Has seen a true copy in the hands of the mayor. [This is the copy in evidence.] Carter—Pettigrove held out the inducement to me that I should have the refusal, by gift or purchase, of that part of the strip in front of my lots. At another time, standing at the wharf, Pettigrove said that property immediately in front some day would make him a fortune. Has heard Pettigrove say it was public property. He was in a little pet after he had sold. King—Enquired of Pettigrove and Lovejoy, and they told him this ground was public. Again, in 1850, Pettigrove made the same statement. He was angry with Lownsdale. Smith—This ground was generally understood to be a public levee. Never heard it questioned till 1850. The lots on the west side of it were called *front* lots, by the proprietors and citizens.

Here is the testimony of one of those who laid out the town, and not contradicted by the other, of an express setting apart of this

ground for the use alleged. Pettigrove does not say it was not so set apart, but merely that he does not remember having *said* so. Six witnesses, however, testify that he made that statement on more than that number of different occasions. His memory, saying nothing of his veracity, cannot therefore be trusted. The defendants brought this witness from Puget Sound, where his deposition could have been taken quite as well, if the facts, as they lay in his memory, were desired, and where he could have testified free from suspicion, in order to take his deposition under their personal superintendence. And yet, after that unusual proceeding, for which he declared he should be well paid, and after opportunity for private conference, they omitted to ask him the question whether, in laying off the town, "All from the street to the river, was to remain as public property, open and free;" though the object of that long journey was to disprove that very fact, to which Lovejoy had already testified, and of which *he* was the only remaining witness. No reason can be imagined for this omission, except the knowledge, obtained by those interviews, that, with all his frailties, he could not be trusted to answer that decisive question. It is enough, however, that Lovejoy swears positively to the act of setting it off, and the purpose for which it was done, in which act and intent both proprietors concurred; none of which is denied by Pettigrove; and that this original act of dedication, thus satisfactorily established, was, for a series of years, repeatedly confirmed by the declarations and conduct of Pettigrove, contemporaneously with a corresponding use of the ground by the public, in full confidence of their right, with his knowledge and without objection, as a mass of testimony shows. This produces unhesitating belief in the mind of the court, that the strip was thrown out to the public, precisely as Lovejoy states.

And without any such original dedication, the abandonment of this land from 1845 to 1850, to the free and apparently rightful use of the public, of itself, under the circumstances, estops the proprietors from reasserting their ownership, and render the documentary evidence, and the evidence of express dedication, of little consequence. For he who induces the public to believe his land a gift, or knowingly permits them to use and treat it as their own, until they have so accustomed themselves, and adjusted their property, and accommodated their business to it, that they cannot, without detriment, be dispossessed, confers a right which he can no more resume without wrong, than he can rightfully seize what was acquired otherwise than by his gift. *Turpe est fidem fallere*, "It is base to disappoint the expectations we have authorized," is the key-note of the common and the civil law, of which equity is compounded. It is a fundamental principle of natural justice pervading all systems of jurisprudence, and common to all countries where man is civilized. *Rugby Charity* vs. *Merriweather*, 11 East, 372, note; *Jarvis* vs. *Dean*, 3 Bingham, 447; *Gamble* vs. *St. Louis*, 12 Missouri, 617.

In the *St. Louis Case*, one who had left open an alley through his

ground for his private use, and allowed the public also to use it, and treat it as a street, for two years, without objection, was held to have dedicated it to the use of the public as a highway, and was denied the right to reassert his title. No particular length of time is necessary to establish an abandonment of land to the public. It is sufficient if it be *used* by the public with the assent of the owner for *such* time that an interruption would be an injury—each case depending on its own circumstances. *Cincinnati* vs. *White*, 6 Peters 431; and the *St. Louis Case* above cited.

The concurrence of the testimony with the plat, produces a degree of certainty unusual to litigated cases, that the proprietorship came to the present owners incumbered with the public easement. Of this they had notice, both actual and constructive, for it was open and notorious. And the testimony, which is too voluminous for quotation, fully shows that they recognized and respected the public right, until, after much importunity from some of the witnesses, and doubtless others, who had an itching palm for this attractive property, they yielded, one of them after another, to the desire and hope of reclaiming the tempting prize. The testimony of Carter shows that he had succeeded in turning the thoughts of Pettigrove wistfully in that direction. The same appliances were brought to bear upon his successors. It was the work of time for the poison to produce its effect; and then, the plat, with its front street bounded by the river, had been so long before the public eye; and the public had so long used the whole street accordingly, in the full belief of their right; and the proprietors had so often encouraged that belief by declaring it destined to that use, that the time was past when it could be rightfully or successfully reclaimed, even if it were not, as Lovejoy proves it was, originally so intended.

The wharf, on which stress is laid, and the slaughter-house which Pettigrove explained as temporary, are not evidence of private property against such clear proofs of dedication. Even the sale of lots and the erection of permanent buildings, have been held not to disprove a dedication otherwise established, as appears by the *Cincinnati Case*, above cited, and the *Lebanon Case*, 9 Ohio, 80. Neither is the state of titles in Portland material. In that respect, it is also identical with the *Cincinnati Case*, where the title was in the United States, who had bargained it to Symmes and he to the town proprietors; and yet the Supreme Court of the United States held the dedication good.

We have passed over the question whether it was strictly regular for the plaintiff to bring this suit in his own name. If the bill had been demurred to, or the objection taken by the answer, perhaps an amendment would have obviated any real or supposed defect, and so brought the merits to judgment. As the parties appear to have waived technicalities, and to have sought the opinion of the Court upon the main question, that alone has received attention.

We have also disregarded the numerous objections to testimony,

found scattered through the depositions. A motion to suppress depositions or parts of depositions, must in equity precede the hearing, as at law it must precede the swearing of the jury; because if suppressed, it may be necessary to continue the cause, or take other steps to replace the evidence thus excluded.

The ground being adjudged a highway and public levee, it becomes a question what order should be made respecting the several buildings erected upon it pending this litigation.

That they were wrongfully placed there, in violation of the injunction, is evident. Even if erected innocently, their removal would be the legitimate result of this decision, unless the public should suffer them to remain. But they occupy an inconsiderable part of a long line of front, leaving above, below, and between them, abundant space for the public accommodation, both for the present and for an indefinite future. Their removal is not to be ordered by way of retribution, for equity scorns revenge; and it cannot be done at present on the ground of necessity, for their place is not required for the only use to which it can be lawfully devoted.

By the Spanish law, if one erects houses on public ground they must be pulled down, "and if the corporation choose to retain them for their own use, they may do so." And Domat says, "If it should happen that buildings should be constructed on a public square, they might either be demolished, if found inconvenient, or suffered to stand on condition of paying rent or making some other amends to the public, if that be found more advantageous." If this were authority here, we do not see its applicability to the present case. If one wrongfully builds on another's land, the building belongs to the owner of the land. The city is not the owner, but the guardian of this ground. It is the right and the duty of the corporation, to see that it is kept in a fit state for use, to the extent of the public wants. But having no title in the soil, it can have none in the buildings. These being in the highway, which is incapable of private ownership, belong to no one unless it be to him who built them. If he neglects to save them by removing them, the public, through the proper authorities, may destroy them, not wantonly, but to clear the ground when needed for its legitimate use.

A decree will therefore be entered declaring the public right, and making the injunction perpetual, and authorizing the city to remove all fences and other obstructions except the permanent buildings, which may remain until the further order of the District Court; to obtain which order the city may apply by petition for the benefit of this decree, and for further directions, whenever the interests of the public shall require it.

SUPREME COURT. June Term, 1854.

Supplementary Opinion. Per Williams, C. J.

This case was decided at the last term of this Court, and a decree,

making the injunction perpetual, rendered for the plaintiff. The facts were then stated; application is now made for a re-hearing. Defendants urge that the decree heretofore made ought to be set aside, because no injunction can be made perpetual in a case of this kind until the title to the property in dispute can be ascertained at law. Chancery, it appears to us, is quite as competent as a court of law to decide the questions involved in this case, and, having once got possession of the matters in controversy, will proceed to adjust them upon principles of equity and good conscience. If the Chancellor thinks it advisable, he may send an issue of fact to a court of law, to be there tried; but such a course, under our system of practice, is not common, and with little of good, is necessarily productive of delay and confusion in the proceedings. Either party in chancery may ask the court to have an issue of fact made up and sent to a jury for trial; but when there is no application for such an order, no ground of complaint exists, because it was not made. Defendants, having acquiesced in the mode of procedure adopted by the District Court, cannot now be allowed to reverse their position, and complain of what has been done by their tacit consent, or make objections here, which if made in the court below, might have been obviated. No rule of law imperatively requires the Chancellor to take the verdict of a jury upon any question in his court, and the office of such verdict when taken is to advise, and not bind his judgment upon the matter in dispute. *Story's Equity Jurisprudence*, vol. 2, page 938.

Defendants say farther that the decree ought not to stand, because an individual cannot interpose by injunction to prevent a public nuisance. The bill alleges, that if defendants proceed with their buildings, the injury to plaintiff will be irreparable; and certain it is, that if plaintiff is entitled to the use and advantage of a public levee, in front and in the vicinity of his block, the exclusive occupation of such levee by the erection of houses thereon, would be greatly prejudicial to his interests. The damages to the property, for purposes of trade and commerce, to which it is adapted by its location, can hardly be estimated. So long as the nuisance continued, so long would the business facilities of such property be obstructed or destroyed. There is no adequate remedy at law. Suit after suit would have to be brought by plaintiff, as the damages are forever accruing, and he would be compelled at last to submit to the wrong, or, to what is less desirable, the burden of an interminable litigation. Weight ought to be given to the fact, that at the time this injunction was sued out, there was no real estate in the territory subject to execution, so that a judgment recovered for any considerable amount would hardly be collectable.

No private person can step forward, it is said, to protect the public interests in a cause of this kind, because such right is exclusively confided to the public authorities. Admitting that an individual may not obtain an injunction to prevent a public nuisance,

when the injury is the same to him as to others, still the right to such remedy by any individual may exist when the injury is *much greater* to him than to other persons. Plaintiff, it appears, paid $10,000 for his property, and any person, so disposed, might make such property almost valueless by erections upon the adjoining levee, if the city authorities, having the sole power to act in the matter, should decline for any reason to restrain him. Where the power to prevent such a wrong exists, the person threatened must be allowed to call it into exercise. No objection is found to the rule that an individual may have an injunction to prevent a public nuisance, when such nuisance will be, when created, an extraordinary injury to his property, irreparable in damages, or irremediable at law, without a multitude of suits. *Corning et al.* vs. *Sowers*, 6 *Johns. Ch. R.* 439; *City of Georgetown* vs. *The Alexandria Canal Co.*, 12 *Peters*, 91; *Cowler* vs. *Tucker*, 19 *Vesey*, 616; *Brown* vs. *Manning*, 6 *Hammond R.*, 298; *Liberg* vs. *Gallipolis*, 7 *idem*, 217.

Defendants also insist, that if the original proprietors of Portland did dedicate the levee to the public, such dedication does not bind those who succeeded to the rights of proprietorship. To which it may be replied, that if said proprietors legally transferred any portion of their possessions or title to persons, or the public, such transfers will hold good against those afterwards buying them out, for the purchasers only take what said proprietors had left to sell. The streets and levee in Portland seem to have become the property of the public in the same way, and defendants, under pretence of ownership, might as well build their houses in the one as upon the other. The present proprietors having adopted and made sales by the map, or plot of the town as laid off by their predecessors, are now estopped from saying that the streets and public grounds are not such as said map or plot show them to be. Something has been said about the inability of the proprietors to make a dedication of land when the title is in the United States. Whatever the effect may be upon the rights of the United States, it is clear that the proprietors might sell and transfer whatever interests they had in the land, and having conveyed them, and received a compensation therefor, cannot repossess themselves of such interest at pleasure. Dedication may be made of what a man has, be it much or little, and when made and accepted, binds the maker.

So far as the question of dedication is concerned, the former opinion in this case is full enough upon that subject. Courts and juries are bound to decide questions of fact in civil cases according to the preponderance of testimony. Eleven intelligent and unimpeached witnesses testify, with more or less pointedness, that the levee was held out by the proprietors, and generally regarded as public property, and their testimony is confirmed by the unchanging lines of the map produced in evidence. But two witnesses appear to bolster up the opposite side. Is not the conclusion irresistible from such an exhibition of proof, that the levee was set apart for public use?

Portland was laid out for what it has come to be, the emporium for a large country, and common sense forbids us to suppose that the first proprietors intended that the commercial transactions of such a place should be carried on through the back-doors and windows of shops crowded along the water's edge. Public levees are almost as necessary in such towns as public streets. Much reliance is placed by plaintiff upon the case of *Irwin* vs. *Dixon et al.* 9 *Howard*, 25, but the only point decided there is, that no dedication had been made of the land in question, and the evidence clearly supported that conclusion. We think that the case of *Cincinnati* vs. *White*, 6 *Peters*, 431; *Barclay et al.* vs. *Howell's Lessee*, 6 *Peters*, 498; *New Orleans* vs. *The United States*, 10 *Peters*, 662; *Trustees of Watertown* vs. *Cowen*, 4 *Page's Ch. R.* 510, are authorities decisively showing a dedication, where the evidence to the point is as full as it seems to be in this case.

Application denied.

DEADY, J., dissenting.

SUPREME COURT, CLERK'S OFFICE, SALEM,
Oregon Territory, ss:

I, J. G. Wilson, Clerk of the U. S. Supreme Court of Oregon, do hereby certify that the foregoing are true and perfect copies of the original papers, and of the record and proceedings in said cause, as will appear from the original papers now on file, and the Court record now in my office at Salem, and in my possession; save and except the map or plot of said City of Portland, annexed, which is the original one used upon the hearings of said cause in the Courts of this Territory.

Witness my hand and the seal of the Supreme Court of Oregon, at Salem, affixed this 21st day of August, A. D. 1856.

[L. S.] J. G. WILSON,
Clerk of the U. S. Supreme Court of Oregon.

UNITED STATES SUPREME COURT,
in and for Oregon Territory. June Term, 1856.

JOSIAH L. PARRISH, complainant,
vs.
DANIEL H. LOWNSDALE, LEONARD HARRIS et al., defendants.

In Chancery. Appeal. Washington County.

Cost Bill,
In District Court.

Clerk's Fees,	
Sheriff's Fees,	20 02
Witnesses' "	22 20
Depositions,	57 10

In Supreme Court.

Clerk's Fees,	43 00
Sheriff's Fees,	1 45
Total,	

I, J. G. Wilson, Clerk of the Supreme Court of Oregon, do hereby certify that the above is a true and correct copy of the costs in said cause adjudged, as appears by the Cost Book of the Supreme Court, now in my office at Salem, Oregon.

In witness whereof, I have hereunto set my hand and affixed the official seal of said Court at Salem, this 21st day of August, A. D. 1856. [L. S.] J. G. WILSON

Clerk of the Supreme Court of Oregon.

Know all men by these presents that we, Ami P. Dennison, Lewis M. Starr, and J. W. Cleaver, of Oregon Territory, are held and firmly bound unto Josiah L. Parrish, of said territory, in the full and just sum of five hundred dollars, to be paid to the said J. L. Parrish, his executors, administrators, and assigns; to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 22d day of August, in the year of our Lord one thousand eight hundred and fifty-six.

Whereas, lately, at a Supreme Court in and for the Territory of Oregon, in a suit depending in said Court between Josiah L. Parrish, complainant, and Daniel H. Lownsdale, Leonard Harris, Zachariah C. Norton, and Ami P. Dennison, under the style of Norton and Dennison, Stephen Coffin, Thomas Stephens, and Wm. W. Chapman, defendants, judgment and decree was rendered against the said defendants; and the said defendants having obtained an allowance for appeal, now entered of record in the said Supreme Court, of the said cause, and a citation, directed to the said Josiah L. Parrish, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now the condition of the above obligation is such, that if the said D. H. Lownsdale, L. Harris, Z. C. Norton, Ami P. Dennison, S. Coffin, Thos. Stephens, and Wm. W. Chapman, shall prosecute their said appeal to effect, and answer all damages and costs, if they fail to make their said appeal good, then the above obligation to be void, else to remain in full force and virtue by law.

A. P. DENNISON, [SEAL]
LEWIS M. STARR, [SEAL]
J. W. CLEAVER. [SEAL]

Sealed and delivered in presence of
J. G. WILSON.

OREGON TERRITORY, *Aug.* 22*d*, 1856.

Approved by J. G. WILSON,

Clerk of the U. S. Supreme Court of Oregon.

SALEM, O. T., *Aug.* 22*d*, 1856.

Copy of Bond.

THE UNITED STATES OF AMERICA,
Territory of Oregon.

To Josiah L. Parrish, Esq., greeting:—

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to an appeal filed in the Clerk's office of the Supreme Court of Oregon, wherein Daniel H. Lownsdale, Leonard Harris, Z. C. Norton, Ami P. Dennison, Thomas Stephens, Stephen Coffin, and Wm. W. Chapman, are appellants, and your are appellee, to show cause why said appeal should not be sustained, and the judgment decree, heretofore rendered against said appellants, should not be reversed or modified.

Witness the Hon. Geo. H. Williams, Chief Justice, and J. G. Wilson, Clerk of the United States Supreme Court, in and for Oregon Territory, and the seal of said Court, at Salem, affixed this third day of September, A. D. 1856.

[L. S.] J. G. WILSON,
Clerk U. S. Sup. Court of Oregon.

On this 3 day of Sept. A. D. 1856, personally appeared before me, J. G. Wilson, Clerk of the Supreme Court of Oregon, the subscriber, R. A. Barker, of Oregon, and makes oath that he delivered a true copy of the within citation to Josiah L. Parrish, at Salem, in said territory.

Witness my hand and the seal of said Supreme Court at Salem, affixed this 3d day of September, A. D. 1856.

J. G. WILSON,
Clerk of the U. S. Supreme Court of Oregon Territory.

Served a copy of the within citation upon Josiah L. Parrish, at Salem, Oregon, this 3d day of Sept'r, 1856.

N. A. CORUOGER,
Sec'y.

Per A. BARKER,
Dep'y.

Fees, 1 45.

Endorsed: Oregon Territory, Sup. Court. No. 126. Daniel H. Lownsdale, Leonard Harris and *al.*, appl'ts, *vs.* L. Parrish. Filed 9th May, 1857.

OREGON TERRITORY,
Washington County, ss:

To the Sheriff of Washington County, greeting:—

In the name of the United States of America, you are hereby commanded to summons Thomas Stephens, Leonard Harris, Zachariah

C. Norton, A. P. Dennison, Stephen Coffin, D. H. Lounsdale, and W. W. Chapman, if found in your county, to be and appear before the Honorable District Court in and for Washington County, on the first day of the next term thereof, to be holden at Hilsborough, on the third Tuesday the 15th day of October, A. D. 1850, to answer unto J. L. Parrish, complainant, in a petition and complaint filed on the Equity side of said Court. Hereof fail not at your peril.

Witness the Honorable O. C. Pratt, Judge of said Court, this the 29th day of July, A. D. 1850.

[L. s.] R. WILCOX,
Cl'k District Court, Washington County.

Service,	87
Return,	25
3 copies,	1 50
Mitege,	2 10
	5 82

W. H. BENNETT,
Sheriff.

Subpœna.

J. L. PARRISH
vs.
THOMAS STEPHENS *et al.*

I, W. H. Bennett, do hereby certify that I executed the within writ, by leaving a true copy with Thomas Stephens, A. P. Dennison, and W. W. Chapman, and by reading the same to Daniel H. Lounsdale, and Leonard Harris, Zachariah C. Norton, and Stephen Coffin, absent from the county, this 29th day of July, A. D. 1850.

W. H. BENNETT,
Sheriff of Washington Co.

In D. C.

J. L. PARRISH
vs.
THOMAS STEPHENS, LEONARD HARRIS, ZACHARIAH C. NORTON, A. P. DENNISON, Merchants, trading under the name and firm of Norton & Dennison, STEPHEN COFFIN, DANIEL H. LOUNSDALE, and W. W. CHAPMAN.

Humbly complaining, that in 1845, Francis W. Pettigrove, and Abbott L. Lovejoy, of the T. of O., caused to be surveyed, and did lay out a town on the W. bank of the W. River, called and named Portland, and published a plat of the same, with the blocks, streets, public ways and alleys, distinctly marked thereon, agreeably to the survey of the same. The said town plat of the said town of P. being on the lands of the U. S. unsurveyed and unsold by the said U. S.

That your orator, in the latter part of 1849, purchased a block in said town, containing 8 lots (which said block is marked No. 1 on said plat), from L. C. Gray, who claimed title to the same by deed of conveyance from F. W. Pettigrove, A. E. Wilson, and David McLoughlin, merchants, trading under the name of Pettigrove & Co., who claimed title to the same from F. W. Pettigrove and Benj'n Stark. That said F. W. Pettigrove being one of the original proprietors of the said town of Portland as aforesaid, and the said Benj'n Stark claiming and holding the said property, as equal and joint owners of the same with said Pettigrove, from the said Abbott L. Lovejoy, one of the original proprietors as aforesaid; and that the possession of the said block No. 1 has been continuous and uninterrupted from the publication of the said plat in the 1845 to the present time in your orator, and those through whom he claimed his title as aforesaid. That as appears upon the face of the said plat of the town of Portland, all that strip of land lying along the whole extent of the front of said town, as marked on the said plat on the said W. River, between the E. line of the front street of said town, running parallel with the course of said river, was left vacant for the public use and benefit of the said town of Portland, as public property, nor liable to be sold by the said proprietors, the said Pettigrove and Lovejoy, nor by the authorities of said town, nor any person or persons claiming under them, or either or any of them, but left open, unsurveyed, undivided, and [*unoccupied*] upon the said plat, and declared by the said proprietors as public property to remain and be used as a public levee, by the said town, forever. That the same has from the survey and publication of *of* the said town plat of Portland, in the year 1845 to the present time, been continually used and enjoyed by the public without let or hindrance from the said proprietors, or others claiming under them; the said proprietors and those claiming under them selling and disposing of blocks and lots as marked on said plat, with express declarations accompanying such sales and disposition of the same; that the said front on the said river was public property, and that the value of the lots in the said town, and especially along the western line of the front street running [*through*] Portland with said river, were more valuable from the fact that the space between the eastern line of said street and the river was left vacant for the public use forever. And your orator further shows, that in consequence of the same being left vacant for public use as aforesaid, as appears upon the said plat, and of the representations and declarations of the original proprietors of the said town, and and those claiming under them, and the constant unrestrained and uninterrupted use of said strip of land as aforesaid by the public, as a public levee. Your orator paid a much larger sum of money than he would have paid, had not the said land along the said river described as aforesaid been believed by him to be public property, not liable to individual occupation or exclusive possession. And your orator further shows that, in violation of the right of y. o., in common

with *with* the rights of the public, the above named defendants, or some or one of them pretending to own and be possessed of the said levee or public property as aforesaid, or has caused the same to be surveyed and divided into lots, and under such aforesaid pretended ownership and possession, have sold and disposed of portions of said public property, in violation of public rights and to the great detriment, injury, and deprication in value of the property of y. o., as above described. And y. o. further shows that Z. C. Norton and A. P. Dennison, merchants aforesaid, claim to be the owners of a portion of the said public property in the vicinity of the said property of y. o. above described; and that the said Thomas Stevens and Leonard Harris, have entered upon the said public property so claimed by said Norton and Dennison, and are exercising the right of possession on their own behalf, or that of the said Norton and Dennison, by hauling and placing lumber thereon, with the avowed and open intention of a permanent structure thereon, to be used as a store or dwelling house. And y. o. further shows that, if the said structure now proposing to be built by the said Stevens and Harris should be erected thereon, and the public property on which it is proposed to erect the same be so occupied by the said Stevens and Harris, or the said Norton and D., or by any other person or persons claiming by, through, or under them, or either or any of them, the property of y. o. above described, will be seriously and permanently injured to an amount which cannot be justly estimated in damages, in a court of law; and further, that if it were possible to estimate the damages to the injury of complainant, for the injury threatened irreparable by means of its character; yet, as y. o. verily believes and avers, that such is the uncertainty of values and credits in the present state of the commercial and domestic relations of the T. of O., the remedy sought for in a court of law, if obtained, would be inoperative and ineffectual; and that y. o.'s sole remedy in the premises, is the interposition of a court of equity, to prevent the threatened injury to his property as aforesaid. And y. o. further shows that the said def'ts were, and are perfectly informed and well knew that the said land in front of the said east line of the said front street, in the said town of P., as above described, always has been since the establishment of the said town, and now is the property of the public for the use of said town as a public levee, and that no right, title, or possession to or of the same can be justly had, acquired or holden; and that y. o. had, from time to time, and repeatedly advised the said def'ts, or some of them, of the same, and repeatedly requested the said Norton and D., and the said J. Stevens and L. Harris, from taking possession or entering upon the said part of the said public levee above described, or building, or in any manner obstructing the same. But now so it is, that the said Norton and D., and the said J. Stevens and L. Harris, combining with the said Coffin, Lounsdale & Chapman, refuse to comply with the request, pretending that the said land described as above as the public

levee, is not public property, but their private property as individuals claiming under, and through the said Pettigrove & Lovejoy, the original proprietors of said town, charge the contrary to be true, as will appear upon the exhibit of the original plat of the said town, published by the proprietors. And y. o. further shows that def'ts well knew, at the time of the taking possession of and exercising ownership of the public levee, and that it was public property for the use of the town of Portland, not liable to sale by the original proprietors of said town, nor any person or persons claiming under them. All which doings, &c. To the end, therefore, &c. Whether the def'ts did not know at the time of their pretended claim to the possession and occupancy of the said land on the public levee, that the same was the public property of the town of Portland, not liable to individual occupancy or possession. Whether they did not know, from an examination, of the original plat of the town of P. that the said levee was the public property of the said town of P. Whether it was not from the establishment of said town until the present time a matter of general public notoriety that the said levee was the public property of said town. Whether they have not been informed by said original proprietors, or those claiming under them, that said levee was designed and expressly set apart for the public use. Whether the original proprietors, or those claiming under them, or some of them, did not make known to them, or either of them at the public sale or sales of lots numbered upon said original plat that the said levee was public property as aforesaid. Whether those claiming said town by purchase or otherwise from the original proprietors, or some of them, have not to the knowledge and in the hearing of said def'ts, or some of them, publicly stated at the public sale of lots marked on said original plat, that the said levee was public property. Whether said def'ts, or some of them, have not publicly or privately stated to purchasers that the lots in said town offered for sale by said def'ts, or some of them, were not enhanced in value from the right of the owners of said lots in common with the public to the free, uninterrupted, and indefeasible use and enjoyment of the said levee as public property not subject to individual or occupancy.

Prays injunction on that part of levee described as where Norton and D. are about to build.

J. L. PARRISH,
by W. M. KING,
K. PRITCHETTE,
Sol's.

Endorsed: Washington, District Court. J. L. Parrish *vs.* D. H. Lounsdale *et al.* Copy of bill. J. McCabe, of Council for Compl'ts.

Know all men by these presents that we, J. L. Parrish, Thos. H. Smith, Finice Caruthers, James Ternilliger, and Hugh D. O'Bryant,

are firmly held and bound unto Thomas Stephens, Leonard Harris, Zachariah C. Norton, A. P. Dennison, Stephen Coffin, Daniel H. Lownsdale, and W. W. Chapman, in the penal sum of ten thousand dollars, good and lawful money of the United States, well and truly to be paid unto them, their heirs, assigns, and legal representatives, provided there is a breach in the condition following, that is to say: The said J. L. Parrish, one of the above named obligors, has filed a bill or petition in the District Court in and for the County of Washington, Territory of Oregon, praying for an injunction against the above named obligees, which said prayer has been allowed, and the said obligees restrained and enjoined as prayed for in said bill. Now, if the said J. L. Parrish shall prosecute the said suit promptly, and without unreasonable delay, to a final hearing, and shall pay or cause to be paid any and all costs of suit, as well as damages sustained by the said defendants by reason of the wrongful suing out of said injunction, which may be awarded against him, then this obligation to be void, otherwise to remain in full force. Witness our hands and seals this the 29th day of July, A. D. 1850.

J. L. PARRISH. [SEAL.]
THOS. H. SMITH. [L. S.]
JAMES TERNILLIGER. [L. S.]
FINICE CARUTHERS. [L. S.]
HUGH D. O'BRYANT. [L. S.]

Attest, R. WILCOX.

The foregoing bond and sureties thereto approved this 29th day of July, A. D. 1850.

R. WILCOX,
Cl'k District Court Washington County.

Endorsed: J. L. Parrish *vs.* Thomas Stephens *et al.* Bond. Filed this the 29th day July, A. D. 1850.

R. WILCOX,
Clerk D. C.

IN THE DISTRICT COURT OF THE UNITED STATES,
Washington County, Second Judicial District.

In Chancery.

J. L. PARRISH
vs.
THOMAS STEPHENS, LEONARD HARRIS, ZACHARIAH C. NORTON, A. P. DENNISON, Merchants, trading under the name and firm of Norton & Dennison, STEPHEN COFFIN, DANIEL H. LOWNSDALE, and W. W. CHAPMAN.

In the name of the United States of America, the above named defendants, their councillors, attorneys, solicitors, and agents, workmen, and servants, are hereby strictly commanded and enjoined,

under the penalty of ten thousand dollars, to be levied on their and each of their lands, tenements, goods and chattels, to the use of the complainant in this cause, that they and each of them do henceforth absolutely desist and forbear from building, or aiding, or in any manner assisting to build, upon that part of the public levee in the Town of Portland upon which the defendants, Stephens, Harris, Norton, and Dennison are now preparing and threatening to build, and from obstructing the said part of the said public levee in any manner or under any pretence whatsoever, so as to prevent the free public use of the same as the public property of the town of Portland. This injunction and command to remain in force until the said defendants shall fully answer the said complainant's bill, and this Court make other order to the contrary.

And this the said defendants nor either of them are in any wise to omit under the penalty aforesaid.

Witness the Hon. O. C. Pratt, Judge of said Court, this the 29th day of July, A. D. 1850.

[L. S.]

R. WILCOX,
Cl'k District Court Washington County.

I, W. H. Bennett, do hereby certify that I executed the within writ by showing the original and delivering copies to Thos. Stephens, A. P. Dennison, and W. W. Chapman, and by showing the original to Leonard Harris and Daniel H. Lownsdale, Stephen Coffin and Zachariah C. Norton, absent from the county, this 29th day of July, A. D. 1850.

W. H. BENNETT,
Sheriff Washington County.

Service,	4 75
Return,	25
Mileage,	21
3 copies,	3 00
	10 00

Endorsed: J. L. Parrish *vs.* Thos. Stephens *et al.* Injunction.

J. L. PARRISH
vs.
THOMAS STEPHENS *et al.*

A case in Chancery in the U. S. District Court of Washington County, Special Term after April Term, 1851.

The plaintiff in this case comes into Court by A. Holbrook and R. P. Baise, his solicitors, and moves the Court to render judgment against the defendants *pro confesso*, for the reason that the defendants have not filed an answer to the bill.

HOLBROOK & BRISE,
Solicitors for P't'ff.

Endorsed: Parrish *vs.* Stephens. Filed on this 11th day of June, A. D. 1851.

R. WILCOX,
Clerk.

DISTRICT COURT,
Washington County.

J. L. PARRISH
vs.
STEPHENS *et al.*

Chancery.

Stephen Coffin, one of the defendants in the cause above stated, personally appeared before the undersigned, Clerk of the District Court of Washington County, and made oath that some time about the month of August, 1850, the said suit was by agreement in writing compromised, and by the complainant agreed to be dismissed. That the written agreements aforesaid are deposited in the hands of J. B. V. Butler and E. B. Comfort, of Portland, for safe keeping. That defendant did not expect to be called upon for an answer, but that the suit would be dismissed.

S. COFFIN.

Subscribed and sworn to before me in open court this 18th day of June, A. D. 1851.

R. WILCOX,
Clerk.

The defendants, by W. W. Chapman, their attorney, moves the Court for a rule upon J. B. V. Butler and E. B. Comfort, to produce in Court, on the first day of the next term of the Court, the instruments of writing referred to in the foregoing affidavit.

CHAPMAN,
Att'y.

Endorsed: No. 105. Parrish *vs.* Stephens. Filed on this 18th day of June, A. D. 1851.

R. WILCOX,
Clerk.

OREGON TERRITORY,
County of Washington, ss.

J. L. PARRISH
vs.
THOS. STEPHENS *et al.*

In Chancery.

To E. B. Comfort and J. B. V. Butler: It having been made to appear at the June Term of the Hon. District Court, that a paper

or papers containing evidence of a settlement in the above entitled cause were in your possession, you are, therefore, required to produce said papers in Court on the first day of the next term of said Court.

Witness R. Wilcox, Clerk of said Court at Hilsborough, on this 23d day of September, A. D. 1851.

R. WILCOX,
Clerk.

Personally served on the 25th day of September, A. D. 1851, by reading this writ.

WM. H. BENNETT,
Sheriff.

per P. D. W. HARDNYBERG,
per Deputy.

Fees, Service,	1 20
Mileage,	3 00
	$4 20

Endorsed: J. L. Parrish *vs.* Thos. Stephens *et al.* Notice to Comfort & Butler.

Know all men by these presents that we, Stephen Coffin, Daniel H. Lownsdale, and W. W. Chapman, do hereby release to the Town of Portland all our right, title, interest, and *and* claim in and to the land east of Front Street, and between Washington and Main Streets, and will procure the release of all persons claiming land by, through, or under us, within the boundary aforesaid, upon the following condition, to wit: That a majority of two-thirds of the citizens of Portland, on behalf of the said town, shall release all claims to the ground east of Front Street between Washington and Pine Streets, and from Main Street including the present steam saw mill on the upper end of Block No. 8 in said town, and shall authorize the dissolution of the injunction suit of J. L. Parrish against Norton, Dennison, and others. The release of the town shall be filed with E. B. Comfort, and that of Coffin, Lownsdale, and Chapman, with J. B. V. Butler.

Given under our hands and seals this 14th day of August, A. D. 1850.

S. COFFIN. [SEAL.]
D. H. LOUNSDALE. [SEAL.]
W. W. CHAPMAN. [SEAL.]

Know all men by these presents that we, the undersigned, citizens of Portland, for and on behalf of the said town, do hereby release all claim to the land east of Front Street, and between Washington and Pine Streets, and between Main and Jefferson Streets, including the present steam saw-mill, and do authorize the dismissal of the suit of J. L. Parrish against Norton, Dennison, and others, in Chancery, in

the District Court of Washington County, upon condition that Stephen Coffin, Daniel H. Lounsdale, and W. W. Chapman, shall enter into a written agreement releasing to the town of Portland all their right, title, interest, and claim, to the land east of Front Street between Washington and Main Streets, and binding themselves to procure the release of persons claiming land by, through, or under them, within the boundary last above mentioned, and shall file their said written agreement in the hands of E. B. Comfort.

Dated at Portland this 14th day of August, A. D. 1850.

Names.	Names.
James McKowell,	Wm. E. Warren,
Campbel Little,	S. Muney,
J. M. Hortz,	David Shilton,
R. V. Short,	Jacob Wheeler,
Russel Welch,	G. Tibbetts,
J. L. Parrish,	Finice Coruthers,
Daniel McKinney,	Wm. Caples,
J. L. Clinkinbeard,	Winter & Latimer,
L. C. Potter,	E. B. Comfort,
Geo. Kittridge,	James Lytle,
M. Neff,	John Nelson,
Oliver Haley,	C. A. Reed,
C. Brewster,	O. M. Shelton,
F. H. McKinney,	Shubrick Norris,
J. Melvin,	Jno. W. W. McKay,
Geo. W. Barber,	Robert Thompson,
R. Chelen,	Thomas Stephens,
W. H. Berry,	L. W. Harris,
A. J. Binge,	A. W. Kay,
D. Honts,	Delas Jefferson,
J. H. Jones,	J. F. Renolds,
Benjamin Allen,	F. De Witt,
Edward Warren,	W. W. Fowler,
John Perkins,	Alexander Campbell,
W. P. Powers,	B. F. Fisher,
A. W. Hart,	John Lousignont,
Wm. Higgins,	Geo. P. Wrenn,
Jesse Fleming,	T. J. Hobbs,
R. McCary,	Jacob Goldsmith,
G. Montgomery,	Lewis May,
James Gambey,	L. B. Hastings,
John Mordon,	James H. A. Mills,
G. T. Watts,	R. Kendall,
J. B. V. Butler,	James P. Long.
William Warren,	

[Town to Coffin and others. Release.]

Endorsed: Coffin & Co. to the Town of Portland. Release. Filed on this 21st day of October, A. D. 1851.

R. WILCOX,
Clerk.

Should the compromise be effected as proposed in the attached agreement, it is agreed that all claim for damages shall be released and discharged.

August 15th, 1850. W. W. CHAPMAN,
Attorney for the Defendants in the inj'n.

Endorsed: Parrish *vs.* Lounsdale. Agreement.

IN THE DISTRICT COURT OF THE UNITED STATES,
for the Second Judicial District,
Washington County, Oregon Territory.

In Chancery.

J. L. PARRISH, complainant,
and
THOMAS STEVENS, LEONARD HARRIS, ZACHARIAH C. NORTON, & A. P. DENNISON, Merchants, trading under the firm of Norton & Dennison, STEPHEN COFFIN, DANIEL H. LOUNDSDALE, & W. W. CHAPMAN, defendants.

The answer of Daniel H. Loundsdale, one of the defendants to the petition of J. L. Parrish.

This defendant reserving to himself all right of exception to the said petition for answer, thereunto saith: that this defendant is not informed, except by this said petitioner's bill, that said Francis W. Pettigrove and Abbott L. Lovejoy, in the year 1845, or at any other time, ever caused to be surveyed, or laid out a town on the Willamette River, or that the said Lovejoy ever had any interest therein, all the dealings and transactions of this defendant, having been, as hereinafter stated, with said Pettigrove alone. That on the 26 day of August, A. D. 1845, the said Pettigrove recorded the land claim in said petition referred to, and afterwards caused the same to be surveyed by Thomas Brown, and again recorded the same by such survey on the 17th day of February, 1848, as will more fully appear by the certificate of record thereof signed by Theodore McGruder then recorder, hereto annexed, marked A, to which certificate defendant refers and prays to be taken as part of this his answer. That in July, 1846, and not before, said Pettigrove moved on to said claim. That in the month of October, 1845, or thereabouts, previous to his moving on to said claim, said Pettigrove caused a survey to be mad by said Brown, of sixteen blocks of town lots on said claim, and a plat thereof, that is to say of said sixteen blocks of town lots to be drawn, on which said plat said blocks were numbered from one to sixteen, and at said time laid out and marked and designated on said

plat, certain streets then by him intended for public use and travel —and particularly specified on said plat the width of said public streets, and the corners of said blocks—that the northeast corner of block number one of said plat, was the place of beginning of such survey and plat, being situate on and forming the western side of said front street—that said Brown drove a stake at said designated corner, and marked said spot as the place of commencement of said survey and plat. That the building erected by said Pettigrove, after said survey of town lots, and now occupied by L. Snow as a dry-goods store, was placed with its northeast corner directly upon and marking the identical spot occupied by said stake, and still shows the said place of commencement of said survey of blocks. That on said original plat the exact width of the streets in front and easterly of said stake, and between it and said Willamette River, intended to be for public use, was distinctly marked and described as sixty feet and no more, leaving between the eastern side of said street and the river, a strip of land, private property, to low tide water mark, and no more, designated as laid out for the public use and benefit than the blocks of land on the western side of said front street—the said street being named as Front Street on said plat—and that the land between the eastern side of said Front Street and said river was never, to this defendant's knowledge, remembrance, or belief, except as hereinafter particularly set forth, respecting a small portion of land on said river to the southward of the end of said Front Street, nor laid out on any plat or other authentic map of said town by said Pettigrove, or represented to be public property, or appropriated, or abandoned to public use, either by said Pettigrove, or any claiming under him—or given or intended to be given to the citizens of Portland, or to the purchasers of lots or blocks in said city. That in the summer of 1847, said Pettigrove laid out a further number of blocks and lots in said town adjoining these just laid out, and extended the streets before designated—and in the fall of the said last named year laid out a further number of same, and had all the said newly laid out blocks and streets extensions plainly mapped and designated on said original plat. That in the summer of 1846 said Pettigrove built and erected a wharf and slaughter house, east of said Front Street on what is called in said petition the levee. Said wharf being opposite to said lot number one in block number one for his own private use and benefit, and extended said wharf into said river, and continued to use and occupy the same for his own private use and benefit and emoluments, from the time of its erection until the twenty-second day of September, 1848—when said Pettigrove sold the whole of said land claim to this defendant, including said wharf, and excepting certain lots and portions of said claim previously disposed of by said Pettigrove, and other parts received for himself—as by a true copy of his the said Pettigrove's deed of conveyance thereof, hereto annexed, marked B, to which this defendant refers, and prays to be taken as part of this his answer, and by

the original thereof, when produced, will appear. That in said deed of conveyance, and according to the terms of this defendant's purchase of said claim from him said Pettigrove, expressly includes as sold to this defendant the said levee to the low water mark of said Willamette River, and in strict accordance with the previous occupancy by said Pettigrove of said claim. That so far as this defendant is informed and believes, the said Pettigrove not only exercised ownership and occupancy of said levee as aforesaid, but publicly stated in presence of John McName and other citizens of Portland, that the said strip of land was not public property but his own private property, and exhibited and referred to said original plat in proof of his said statements, and forbide said McName and others from trespassing on said levee during the time he held said claim, and before the said sale thereof to this defendant. That to the best of defendant's knowledge and belief, said Pettigrove sold the lots disposed of by him prior to his sale of said claim to defendant as aforesaid, by and according to said original plat, and in no other way; and never by any plat in writing or otherwise represented said levee to be public property; and that this defendant bought said claim from said Pettigrove in the full understanding and belief that the said levee was the private property of said Pettigrove, and as such conveyed to this defendant by said annexed deed. That this defendant has always sold and disposed of lots comprised in said original plat, by and according to said original plat, and has never directly or indirectly, by any plat or otherwise, represented, nor as he believes has any other person or persons claiming under said Pettigrove, or through this defendant, ever represented that the levee in front of said lots or blocks laid out in said original plat, or any part thereof, was public property, or any other than the private property of said Pettigrove, until the said sale and conveyance thereof to this defendant, and the private property of this defendant or his assigns since such sale and conveyance; and that this defendant since said sale and conveyance has ever considered, deemed and treated said levee as the private property of this defendant and his lawful assigns, and in his and their exclusive possession. That it may be true, for anything this defendant knows to the contrary, that the said petitioner is still owner of the said block of lots named in said petition. That this defendant is informed and verily believes that said petitioner purchased same from one L. C. Gray, who purchased from said Pettigrove, after the said sale of said claim by said Pettigrove to this defendant, said Pettigrove having received said block in his said sale of said claim to this defendant, and has had the possession thereof, as in said petition set forth, for the time therein named; and further, that true it is that a portion of the land east of said Front Street, and between said street and said river, has been laid off into lots, and preparations made by the owners thereof, real *bone fide* and not pretended owners thereof, to erect buildings thereon, as they for the reasons above set forth had a full and lawful right to do—the same part of said levee

where such erections were and are now situate being included in said original plat, outside and east of the said width of sixty feet, the extent of said street. That this defendant has not, since the service of this injunction in this cause, erected, or caused to be erected, any buildings upon, or placed any obstructions on said levee: And this defendant further answering says, that since the filing of said petition the said petitioner has offered and proposed to compromise the said matters pending in his said petition, and therein wrongfully sought to be enforced against this defendant and others, by this defendant giving to said petitioner two lots on said levee opposite the said block of said petitioner, and that this defendant has absolutely refused to give to said petitioner any part of his said private property to abandon his said petitioner's pretended claim, and denied the pretended right of said petitioner, or of other citizens of Portland, or of the public, to or in or over said levee. That while this defendant expressly denies ever having represented said levee as public property, or as abandoned or set apart for public use, this defendant admits that he has stated in public, since the said purchase by him of said claim, that should the legally constituted authorities in that behalf, or any corporation of the town or city of Portland, entitled by law to hold lands, wish at any time to purchase said levee as public property, and to hold it for public purposes, this defendant would wish to keep said levee so much unincumbered as possible for that object, or to that effect. But this defendant expressly denies that in such statement he ever stated that said levee then was or ever could become public property without being first purchased from and conveyed by him to said authorities or corporation for a full and valuable consideration, and never held out any inducements to others to believe that such sale as last aforesaid would be made. That at a public sale of sundry lots of land on a part of said claim laid out by this defendant after said purchase by him from Pettigrove, not included in said original plat, and not in continuation of said Front Street, in the month of June, 1850, by this defendant, he this defendant, with reference solely and only to a piece of land situate on the said river, and in no way connected with said levee as described in said petition—in front of the said blocks originally laid out, or contained in said original plat, stated as follows: that the land in front of the blocks, extending from the lower to the upper steam saw mill on said claim, generally known respectively as the Coffin Mill and Clinkenbead's Mills, were opened and appropriated to the use of the public, or given for that purpose, but never made such statement with respect to any other portion of his said claim. That this defendant was induced to throw open the said part of the bank of said river for the purpose of more readily effecting a sale, and at higher prices, of the said lots, then lately before laid out westerly from said portion of said bank of the river, and of inducing parties purchasing said lately laid out lots to build thereon, and in the belief that he would be a gainer by so doing. That said defendant did not know, nor does he believe that

at the time of said purchase, nor before or since, that said levee was public property. That it was not, so far as this defendant knows or believes, from the establishment of said town of Portland, or at any time a matter of notoriety that said levee in said petition described was public property; but on the contrary, from the said original plat, and the terms of the deed to this defendant annexed, the building of said wharf by said Pettigrove, and the occupation and claiming of said levee by said Pettigrove, this defendant, and his assigns, continuously as private property; this defendant believes the same to have been generally known to be private property. That so far from having been informed by said Pettigrove, that said levee was private property, this defendant understood from him the very reverse, and that understanding is shown and carried out in the said deed referred to and annexed. That the sole and only time when any part of the bank of said river, and that part as above stated, not included in said levee, as described in said petition, was stated to be public property, was in June, 1850, as aforesaid, when the statement aforesaid was made by this defendant as above set forth, and with no understanding or intention, either express, or implied, of abandoning any other portion of his then well known and recognized rights to other portions of his said front or levee. That this defendant has not, and to the best of his knowledge and belief, no other proprietors claiming under said original proprietor Pettigrove, has publicly stated at any public sale of lots marked on said original plat made by said Pettigrove, or on said extensions of same by said Pettigrove as aforesaid, that any part of said levee described on said plat was public property. That defendant has never, except as above set forth, and to the best of his knowledge and belief, no other proprietors of said lots has even stated that the lots in said town designated on said original plat were enhanced in value by the right of the owners of said lots in common with the public, or otherwise, to the use of said lots, and enjoyment of said levee as public property.

And this defendant denies all and all manner of combinations, whereat said defendants are charged without this, that there is anything in said petition contained material to be answered by this defendant not herein answered, confessed, traversed, and avoided, or denied, is true, to the best of his knowledge and belief; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

D. H. LOWNSDALE.

WASHINGTON COUNTY,
Oregon Territory, to wit:

On this 7th day of February, in the year one thousand eight hundred and fifty-two, before me personally appeared the within named Daniel H. Lounsdale, and being first duly sworn, and having sub-

scribed said answer hereto annexed, deposes, and says, that *that* the facts and statements set forth in said answer, as of his own knowledge, are correct and true, and the remaining statements of said answer are true and correct, to the best of his knowledge and belief.

ANTHONY L. DAVIS,
Justice of the Peace.

Endorsed: Second Jud. District, Washington County. J. L. Parrish *v.* Lownsdale, and Others. Answer of Lownsdale. Campbell & Boise, Wait, Sol. for D. H. Lownsdale.

F. W. Pettigrove claims 640 acres of land in Quality County, situate on the Willamette River, and bounded as follows, to wit: commencing at the southeast corner, a stake being the N. E. corner of Wm. Johnson's claim, thence with the meanderings of the river N. 15° W. 900 chs., N. 14° W. 1200 chs.; at 1 ch. ravine N. 12 E. 200 chs., N. 4° W. 450 chs., N. 24 E. 250 chs., N. 500 chs., N. 28 E. 250 chs., N. 8½ E. 9.50 chs., N. 20 E. 21.50 chs., N. 36° E. 350 chs., N. 28 E. 13.50 chs., N. 9 E. 12.72 chs., to a stake of the bank of the Willamette River, wit's trees an oak 6 inches dia., bears S. 64 E. 34 l'ks; pine 6 in. dia. bears N. 51½ W. 46 l'ks; thence W. at 32.50 chs. a fir 5 feet dia.; at 35 chs. a fir 3 ft. dia; at 56 chs. a fir 5 ft. dia.; at 60 chs. spruce 7 ft. dia.; at 62 chs. creek; at 71 chs. fir 2 ft. dia.; at 77 chs. spruce 6 ft. dia.; at 80 chs. spruce 3 ft. dia.; at 91.46 chs. N. W. corner stake wit's fir 4 ft. dia.; bearing N. 58° E. 17 l'ks fir 6 in. dia.; bearing S. 86 W. 23 l'ks; thence S. at 80 chs. S. W. corner wit's fir 6 in. dia., E. 50 l'ks fir 6 in. dia., bearing S. 32 E. 16 l'ks; thence E. at 3 chs. ravine, at 5.50 fir 5 ft. dia.; at 10 chs. fir 4 ft. dia.; at 42.50 chs. fir 1 ft. dia.; at 59 chs. fir 6 in. dia.; at 65.50 chs. swamp; at 70 chs. ravine; at 73.59 chs. place of beginning: Variation 19° 25 E. This being the survey made by Thomas Brown of the claim recorded by the claimant the 26th August, 1845.

Recorded February 17th, 1848.

Attest THEO. MAGRUDER,
Recorder.

Abandoned by the written request of the claimant in favor of Daniel H. Lownsdale, and recorded by said Lownsdale at page *at page* 114 in record book No. 8 the 25th Sept. 1848.

Attest THEO. MAGRUDER,
Recorder.

Endorsed: Claim abandoned by F. W. Pettigrove to D. H. Lownsdale. A. Copied Dec. 8th, 1849.

Know all men by these presents, that I, Francis W. Pettigrove, of

Jantitin County, in the Territory of Oregon, as well for and in consideration of the sum of five thousand dollars to me in hand paid by Daniel H. Lownsdale of the same county, the receipt whereof I do hereby acknowledge as for the reservations hereinafter named, and divers other good causes and valuable considerations, have bargained, remised, and forever released, and by these presents for me, my heirs, executors, and administrators, do bargain, remise, and forever release unto the said Daniel H. Lownsdale, his heirs, executors, and administrators, all and singular my right, title, interest, claim, and demand at law and in equity present, and in expectancy in and to the following described land claim, situate in the said County of Justitin, on the west bank of the Willamette River, between the claims of William Johnson, and John H. Couch, beginning at William Johnson's northeast corner, and running down the said Willamette River at low tide-water mark to John H. Couch southeast corner, and extending westward, bounded on the north by John H. Couch's claim, and on the south by William Johnson's claim, with a line running from north to south from said Couch's claim to said Johnson's claim far enough to include six hundred and forty acres of land, being the same which I now live upon, the right of occupancy of which I purchased of one J. P. Oberton, together with all and singular the houses and out houses, fences, wharfs, and other improvements not hereinafter excepted and reserved from the operation of these presents. The following lands in blocks and lots together with the hereditaments and appurtenances thereunto belonging, are hereby expressly excepted and reserved from the operations of these presents, that is to say, block number one (1), two (2), and sixteen (16) entire, and lots number one (1), two (2), three (3), four (4), six (6), and eight (8), in block number three (3), and lots number one (1), two (2), three (3), four (4), and eight (8), in block number four (4), and lots number one (1), two (2), three (3), and four (4), in block number five (5), and lots number one (1), two (2), and four (4), in block number six (6), and lots number one (1), two (2), three (3), and four (4), in block number fourteen (14), and lots number one (1), two (2), three (3), four (4), and eight (8), in block number fifteen (15), and lots number one (1), and two (2), in block number seventeen (17), and lots number one (1), two (2), three (3), and four (4), in block number eighteen (18), and lots number one (1), two (2), three (3), four (4), six (6), seven (7), and eight (8), in block number nineteen (19), and lot number four (4), in number twenty-seven (27); also a tract of land four hundred and sixty (460) feet being by two hundred and thirty (230) feet wide lying westerly from and next adjoining the ground upon which my dwelling house is situated, known as Benjamin Stark's blocks, which said blocks and lots so hereby expressly reserved have been sold by me as town property to different persons, with the exception of the lot upon which my store is situated, reserved also for me. Given under my hand and seal this twenty-second day

of September, in the year of our Lord one thousand eight hundred and forty-eight.

FRANCIS W. PETTIGROVE, [L. S.]

In presence of
A. E. WAIT,
ALBERT E. WILLSON.

Endorsed: Second Jud. Dist. Court, Washington County, J. L. Parrish, *v.* D. H. Lownsdale.

Answer of D. H. Lownsdale. Filed on the 7th day of February, A. D. 1851.

R. WILCOX, *Clerk.*
CAMPBEL & BOISE, *Sol. for*
D. H. LOWNSDALE.

Know all men by these presents, that I, Francis W. Pettigrove, Sautitin county, in the Territory of Oregon, as well for and in consideration of the sum of five thousand dollars to me in hand paid by Daniel H. Lownsdale, of the same county, the receipt whereof I do hereby acknowledge, as for the reservations hereinafter named, and divers other good causes and valuable considerations, have bargained, remised and forever released, and by these presents, for me, my heirs, executors and administrators, do bargain, remise and forever release unto the said Daniel H. Lownsdale, his heirs, executors and administrators, all and singular my right, title, interest, claim and demand at law and in equity, present and in expectancy, in and to the following described land claim, situate in the said county of Tuotitin, on the west bank of the Willamette river, between the claims of William Johnson and John H. Couch, beginning at William Johnson's northeast corner and running down the said Willamette river at low tide water-mark to John H. Couch southeast corner, and extending westward, bounded on the north by John H. Couch's claim and on the south by William Johnson's claim, with a line running from north to south from said Couch's claim to said Johnson's claim, far enough to include six hundred and forty acres of land, being the same which I now live upon, the right of occupancy of which I purchased of one J. P. Overton, together with all and singular the houses, out-houses, fences, wharfs and other improvements not hereinafter exempted and reserved from the operations of these presents. The following lands in blocks and lots, together with the hereditaments and appurtenances thereunto belonging, are hereby especially exempted and reserved from the operations of these presents, that is to say, blocks number one (1), two (2), and sixteen (16) entire, and lots number one (1), two (2), three (3), four (4), six (6) and eight (8), in block number three (3), and lots number one (1), two (2), three (3) and four (4) and eight (8) in block number four (4), and lots number one (1), two (2), three (3) and four (4) in block number five (5), and lots number one (1),

two (2) and four (4) in block number six (6), and lots number one (1), two (2), three (3) and four (4) in block number fourteen (14), and lots number one (1), two (2), three (3), four (4) and eight (8) in block number fifteen (15), and lots number one (1) and two (2) in block number seventeen (17), and lots number one (1), two (2), three (3) and four (4) in block number eighteen (18), and lots number one (1), two (2), three (3), four (4), six (6), seven (7) and eight (8) in block number nineteen (19), and lot number four (4) in block number twenty-seven. Also, a tract of land four hundred and sixty feet (460) long by two hundred and thirty (230) feet wide, lying northerly from and next adjoining the ground upon which my dwelling is situate, known as Benjamin Stark's blocks, which said lots and blocks is hereby expressly reserved, have been sold by me as town property to different persons, with the exception of the lot upon which my store is situate, reserved also for me. Given under my hand and seal this twenty-sec'd day of September, in the year of our Lord one thousand eight hundred and forty-eight.

FRANCIS W. PETTIGROVE, [SEAL.]

In presence of A. E. WAIT,
ALBERT WILSON.

TERRITORY OF OREGON,
Clackemens County, ss.

On the 26th day of March, A. D. one thousand eight hundred and forty-nine, Francis W. Pettigrove, to me known to be the person who executed the before stated quit-claim deed to Daniel H. Lownsdale, personally came before me, and on a private examination before me acknowledged that the said quit-claim deed was by him made and executed freely for the purposes therein named or expressed.

GABRIEL WALLING, *J. P.*

Endorsed: F. W. Pettigrove, deed to D. H. Lownsdale. Exhibit B.

JOSIAH L. PARRISH, Complainant,
vs.
THOMAS STEVENS, LEONARD HARRIS, ZACHARIAH C. NORTON, and A. P. DENNISON, Merchants trading under the firm of Norton & Dennison, STEPHEN COFFIN, DANIEL H. LOWNSDALE, W. W. CHAPMAN, Defendants.

District Court of the United States of America for the Second Judicial District of the Territory of Oregon, within and for the County of Washington, in Chancery sitting. The replication of Josiah L. Parrish, complainant, to the answer of Daniel H. Lownsdale, one of the defendants in the above cause.

This repliant, saving and reserving to himself all, and all manner of advantage of exception to the manifold insufficiencies of the said

answer for replication thereunto saith: That he will aver and prove his said bill of complaint to be true, certain, sufficient in the law to be answered unto, and that the said answer of the said defendant Daniel H. Lownsdale, is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing *or thing* whatsoever, in the said answer contained, material or effectual in the law, to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is, and will be ready to aver and prove, as this Honorable Court shall direct; and prays as in and by his said bill he hath already prayed.

A. HOLBROOK,
Solicitor for Complainant.

JAMES McCABE,
of Counsel for Comp't.

Endorsed: Washington District Court, in Chancery sitting. Josiah L. Parrish *vs.* Thos. Stevens *et al.*, defendants.

Replication to the answer of D. H. Lownsdale. Filed on this 1st day of March, A. D. 1852.

R. WILCOX, *Clerk.*
A. HOLBROOK, *Sol'r.*
JAMES McCABE,
of Counsel for Compl't.

IN DISTRICT COURT OF THE UNITED STATES
for the Second Judicial District Oregon Territory, Washington County. In Chancery.

JOSEPH L. PARRISH, Complainant,
AND
THOMAS STEVENS, LEONARD HARRIS, ZACHARIAH C. NORTON, and A. P. DENNISON, Merchants, trading under the firm of Norton & Dennison, STEPHEN COFFIN, DANIEL H. LOWNSDALE, and W. W. CHAPMAN, Defendants.

The answer of Zachariah C. Norton, one of the defendants, to the petition of J. L. Parrish.

This defendant, reserving to himself all right of exception to the said petition, for answer thereunto saith: That he, this defendant, as to the statements in the said petition respecting the appropriation by the said original town proprietors of said levee to the public use, and as to the said plot thereof, and as to the representations of said original town proprietors or others that said levee was public property, cannot of his own positive and personal knowledge, answer, but that this defendant has read the answer of Daniel H. Lownsdale, one of the defendants to the said petitioner's complaint, and believes the several statements therein made in answer to the said bill or petition on the several subjects above in this answer referred to, to be

true. That this defendant, on the third day of May, A. D. 1850, purchased in good faith, and in the full belief that the same was private property not in any way appropriated to or claimed by the public, two lots numbered three and four (3 & 4) in block numbered seventy-nine (79), situate on said levee, from Stephen Coffin, who, as this defendant was informed, and verily believes, purchased the same from said Daniel H. Lownsdale, and paid the said Coffin for the same the sum of fifteen hundred dollars. That the paper writing hereto annexed contains, and is a true copy of the deed of conveyance from said Coffin to this defendant of said two lots, to which said copy this defendant refers, and prays that it be taken as part of this his answer: That this defendant did in good faith, and in the belief that he had a lawful right so to do under his said purchase and conveyance, and without any knowledge, information, or belief that said levee was claimed to be public property, contract and make preparations for the erection of a warehouse on said land so purchased by him from said Coffin; and after said preparations were made, and the work of said warehouse had been commenced, and not before, this defendant was for the first time informed of said pretended claim of the public to his said land; that on the service of the injunction issued in this cause, this defendant suspended all further steps towards the erection of said warehouse, although at great inconvenience, and pecuniary loss and interruption to his business, until this defendant was informed and believed that an amicable arrangement and compromise of all the subject matters in controversy in this suit had been made; when in good faith, and full belief that the said suit, on such arrangement, had been or was about to be dismissed, and said injunction, by said arrangement, no longer obligatory upon this defendant, he proceeded to the completion of said warehouse; and this defendant denies all unlawful combinations or confederacy in the premises; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this Honorable Court shall direct, and prays to be hence dismissed unto his reasonable costs and charges by him in this behalf most wrongfully sustained.

Z. C. NORTON.

WASHINGTON COUNTY,
Oregon Territory, to wit:

On this seventh day of February, in the year one thousand eight hundred and fifty-two, before me personally came the within-named Zachariah C. Norton, and having subscribed said foregoing answer, and being first duly sworn deposes and says, that the facts and statements set forth in said answer as of his own knowledge are correct and true, and the remaining statements in said answer are correct and true to the best of his knowledge and belief.

ANTHONY L. DAVIS,
Justice of the Peace.

This indenture, made and entered into this 3d day of May, A. D. 1850, between Stephen Coffin, of Portland, of the first part, and Zachariah C. Norton, of Portland, of the second part, witnesseth: That the party of the first, for and in consideration of the sum of fifteen hundred dollars to him in hand paid, the receipt thereof is hereby acknowledged, doth grant, release, confirm, and quit claim unto the party of the second part, the following described property, to wit: Lot No. (3 and 4) three and four in block (79) seventy-nine in the said Town of Portland, Washington County, Oregon Territory, to have and to hold the said lots to the party of the second part, his heirs and assigns forever, and the party of the first part covenants to warrant and defend said lots against the claims of all persons, the United States excepted; that if he obtains title from the United States to this said property he will convey the same to the said party of the second part by deed of general warranty.

In testimony whereof the party of the first part has set his hand and seal the day and year aforesaid.

S. COFFIN. [SEAL.]

Attest, D. H. LOWNSDALE,
C. A. REED.

(Mem'd.) The words intended in said original deed are, "to warrant and defend said lots against the claims of all persons, the United States excepted."

CAMPBEL & ROISE,
Sol. for D. H. Lownsdale.

The above interlining was left out through mistake at the time this deed was made out.

STEPHEN COFFIN.
By C. A. REED.

Endorsed: Second Jud. Dist. Court, Washington County. J. L. Parrish *vs.* D. H. Lownsdale. Answer of Z. C. Norton. Filed on this the 7th day of February, A. D. 1852.

R. WILCOX,
Clerk.

CAMPBEL & BOISE,
Sol. for Norton.

JOSIAH L. PARRISH, Complainant,
vs.
THOMAS STEVENS, LEONARD HARRIS, ZACHARIAH C. NORTON, and A. P. DENNISON, Merchants, trading under the firm of Norton & Dennison, STEPHEN COFFIN, DANIEL H. LOWNSDALE, W. W. CHAPMAN, Defendants.

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
for the Second Judicial District of the Territory of Oregon, within and for the County of Washington.

In Chancery sitting.

The Replication of Josiah L. Parrish, Complainant, to the answer of Zachariah C. Norton, one of the Defendants in the above cause.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer for replication, thereunto saith that he will aver and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant, Zachariah C. Norton, is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver and prove, as this honorable Court shall direct, and prays as in and by his said bill he hath already prayed.

A. HOLBROOK,
Sol. for Comp't.

JAMES McCABE,
of Council for Comp't.

Endorsed: Washington District Court. In Chancery sitting. Josiah L. Parrish, Comp't, *vs.* Thos. Stevens *et al.*, Def'ts. Replication to the answer of Z. C. Norton. Filed on this 1st day of March, A. D. 1852.

R. WILCOX,
Clerk.

A. HOLBROOK,
Sol. for Comp't.

JAMES McCABE,
of Council for Comp't.

In Chancery.

Before the Hon. O. C. Pratt, Judge of the Second Judicial District, Washington County, Oregon Territory.

The several answers of Stephen Coffin, Defendant, to the Petition of J. L. Parrish.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and inefficiencies in the petitioner's said petition contained for answer thereunto, or unto so much or such parts thereof as the defendant is advised is material for him to make answer unto, he answers and says: That he became interested in the land claim upon which the Town of Portland, in Washington County, Oregon, is built, by purchase of the same from the defendant, Daniel H. Lownsdale, who executed to him his deed for the same, dated March thirtieth, in the year one thousand eight hundred and forty-nine; a copy of said deed is herewith filed and made a part of this answer, and for a more particular description of said property reference thereunto is hereby made. This defendant, further answering, saith that on or about the thirteenth day of December following another agreement was made by and between him, the said Daniel H. Lownsdale, and one W. W. Chapman, also a defendant in said petition; the rights and interest of the parties were so modified and changed that the then named parties thereto became equally interested as partners in the said property. This defendant denies that before his purchase aforesaid he had heard or knew from any source that any portion of said land claim lying on the river and between the river Willamette and what is known as Front Street, in said town, had been given, donated, or in any manner dedicated by any former proprietor or proprietors to the public use and common benefit of the citizens of said Town of Portland. That the first time this defendant heard or knew of a claim being made on behalf of said inhabitants or citizens of Portland to the ground aforesaid was in the summer or autumn of the year one thousand eight hundred and fifty, after his return from California, and after the filing of said petition. This defendant states he soon thereafter set about effecting a compromise between said citizens and the then proprietors of said town, which was accomplished in manner expressed in a certain stipulation or agreement in writing between the parties, for the extent and terms of which *of which* said compromise this defendant refers now to said agreement on the files of this honorable Court. That this defendant, confidently believing that said stipulation had been and would be fully and faithfully performed on the part of said citizens, considered this proceeding and the injunction previously pending at an end. That he had done all that was required of him to perform on his part of said agreement, and was informed and believed the whole

affair was settled, and that said petitioner would dismiss his petition, as by said agreement he bound himself to do.

This defendant, further answering, saith that, after he purchased said land claim, he made no donation or dedication of any portion of the land or ground claimed in said petition other than such release as is mentioned in said written agreement, and that, to the best of his knowledge and belief, no such dedication was made by the proprietor or proprietors of said town, as is claimed in said petition, either before or since his purchase aforesaid, and he is informed and believes that none such was ever made. And this defendant denies all unlawful combinations and confederacy in the said petition charged, without that any other matter or things material or necessary for this defendant to answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant, all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable Court shall direct, and he humbly prays to be hence dismissed, with his reasonable costs and charges in that behalf most wrongfully sustained.

E. HAMILTON.
Sol.

OREGON TERRITORY,
Washington County, ss:

Personally appeared before me, Anthony S. Davis, a Justice of the Peace, Stephen Coffin, above named party defendant, who, being duly sworn, declares that he has read the foregoing answer, and knows the contents thereof, and that the same is true, of his own knowledge, except as to the matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

S. COFFIN.

Sworn to, and subscribed to, before a Justice of the Peace, this 7th day of February, A. D. 1852.

ANTHONY S. DAVIS,
Justice of the Peace.

Copy.

Know all men by these presents that I, Daniel H. Lownsdale, of Tuatitin County, in the Territory of Oregon, as well for and in consideration of the sum of six thousand dollars, to me in hand paid by Stephen Coffin, of Oregon City, in the territory aforesaid, the receipt whereof is hereby acknowledged, as also for the reservations and divers other good causes and valuable considerations, have bargained, remised, and forever released, and by these presents, for me, my heirs, executors, and administrators, do bargain, remise, and forever release unto the said Stephen Coffin, his heirs, executors, and administrators, all and singular, my right, title, interest, claim, and

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demand at law and in equity, present and in expectancy, in and to the following described land claim, situate in the said County of Tuatitin, on the west bank of the Willamette River, between claims, *between claims* of Wm. Johnson, deceased, and John H. Couch, beginning at said Wm. Johnson's northeast corner, and running down the said Willamette, at low tide water-mark, to John H. Couch's southeast corner, and extending westward, bounded on the north by John H. Couch's claim, and on the south by William Johnson's claim aforesaid, far enough to include six hundred and forty acres, being the same which I now live upon, the right of occupancy of which I purchased from Francis W. Pettigrove, together with all and singular, with houses, out-houses, wharves, and other improvements, not before described and reserved from the operation of these presents. The following lands, in blocks and lots, together with the hereditaments and appurtenances thereunto belonging, are hereby expressly exempted from the operation of these presents: that is to say, blocks number one, two, and sixteen entire, and lots number one, two, three, four, and six and eight, in block number three, and lots number one, two, three, four, and eight, in block number four, and lots number one, two, three, and four, in block number five, and lots number one, two, and four, in block number six, and lots number one, two, three, and four, in block number fourteen, and lots number one, two, three, four, and eight, in block number fifteen, and lots number one and two, in block number seventeen, and lots number one, two, three, and four, in block number eighteen, and lots number one, two, three, four, six, seven, and eight, in block number nineteen, and block number four in block number twenty-seven, also a tract of land four hundred and sixty-feet long, by two hundred and thirty feet wide, lying northerly from, and next adjoining grounds, on which my dwelling house is situated, known as Benjamin Stark's blocks, also lots numbers one and two, in block number twenty-seven, and also the lot of one hundred feet, on Front Street, and running back to water's edge, where Nathan Jones now lives, also lot number five, in block number three, also the lot of ground opposite to the southeast corner of Gray's Pojucir, formerly occupied by F. W. Pettigrove and Co., fronting one hundred feet on Front Street, and running to the water's edge back, which said lots and blocks are hereby expressly reserved, and have been sold to different persons, previously to this contract, as town property, to the different persons holding same.

Given under my hand and seal this thirtieth (30th) day of March, A. D. one thousand eight hundred and forty-nine.

D. H. LOUNSDALE. [SEAL.]

In presence of

D. C. PARKER,
J. S. MEEKS.

Endorsed: Washington District Court. Stephen Coffin *ads.* J. L

Parrish. Answer in chancery. Filed on this 7th day of February, A. D. 1852.

R. WILCOX,
Clerk.

(HAMILTON.)

JOSEPH L. PARRISH, Complainant,
vs.
THOMAS STEPHENS, LEONARD HARRIS, ZACHARIAH C. NORTON, and A. P. DENNISON, Merchant, trading under the firm of Norton & Dennison, STEPHEN COFFIN, DANIEL H. LOUNSDALE, W. W. CHAPMAN, Defendants.

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
for the Second Judicial District of the Territory of Oregon within and for the County of Washington.

In Chancery sitting.

The replication of Josiah L. Parrish, complainant, to the answer of Stephen Coffin, one of the defendants in the above cause.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith: That he will aver and prove his said bill of complaint to be true, certain, and sufficient in the law, to be answered unto; and that the said answer of the said defendant, Stephen Coffin, is uncertain, untrue, and insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in the said answer contained, mentioned, or effectual in the law to be replied unto, confessed, and avoided, traversed, or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct, and prays as in and by his said he hath already prayed.

A. HOLBROOK,
Sol. for Comp't.

JAMES McCABE,
of Counsel for Comp't.

Endorsed: Washington District Court. In Chancery sitting. Josiah L. Parrish, Comp't, *vs.* Thos. Stevens, *et al.*, Def'ts. Replication to the answer of Stephen Coffin. Filed on this 1st day of March, A. D. 1852.

R. WILCOX,
Clerk.

A. HOLBROOK,
Sol.

JAMES McCABE,
of Counsel for Comp't.

TERRITORY OF OREGON,
Washington County, ss:

JOSIAH L. PARRISH, Complainant,
vs.
DANIEL H. LOUNSDALE, STEPHEN COFFIN, THOMAS STEVENS, LEONARD HARRIS, ZACHARIAH C. NORTON, and A. P. DENNISON, Merchants, trading under the firm of Norton & Dennison, W. W. CHAPMAN, Defendants.

DISTRICT COURT OF THE UNITED STATES OF AMERICA,
for the Second Judical District of the Territory of Oregon within and for the County of Washington.

In Chancery.

Josiah L. Parrish, the above named complainant, being duly sworn, doth depose and say, that he wants the testimony of the following witnesses to be used in this cause on the hearing thereof, to wit, Nathaniel Crosby, Junior, F. A. Pettigrove, Mr. Thomas Talontin, and others who are absent, and their depositions not taken, that the residence of the said Crosby is at Milton, in said county; that the residence of the said Pettigrove is at a place called Port Townsend, situated on Puget Sound, in said territory, as deponent is informed and believes; that said Tatentin lives at or near Olympia, in Thurston County, in said territory. That he expects to prove by said Crosby that before the filing of the bill in this cause, and after said Lounsdale had come into possession of the Portland property, described in the pleadings in this case, said Crosby attempted to make a contract with said Lounsdale for a purchase of the piece of the land in the bill in this cause claimed to be public property, and lying upon the river in Portland, and that said Lounsdale then and there refused to sell any of said property adjoining the river for the reason as he (Lounsdale) then stated, that the same was public property. And deponent further says, that he expects to prove by said Pettigrove that he, Pettigrove, was a former proprietor of the town of Portland, in said county, and that whilst he (Pettigrove) was such proprietor, he (and his co-proprietor A. L. Lovejoy, of Oregon City,) laid out a part of said town, and in such laying out, dedicated to the use of the public that portion of said lands lying adjoining the river, and described in the bill in this cause as so dedicated; also that the lots then laid out along the west line of Front Street (so called) were called, regarded, and sold by said Pettigrove as "front lots," and brought a higher price in consideration thereof; and deponent further says, that he expects to prove by said Talentin that he (Talentin) bought some lots of said Pettigrove fronting on to the west side of said Front Street, and bought them as front lots, and paid a higher price in consideration of their being front lots. And this deponent further says, that he knows of no other person than the said Crosby,

by whom he can prove the facts expected to be proved by him as above set forth. And that he, deponent, knows of no other witness than the said Pettigrove by whom he can prove the facts expected to be proved by him as above set forth (except certain witnesses whose testimony has already been taken in this cause, some of whom have testified to detached portions thereof, but has not made the same sufficiently definite and connected to satisfy deponent; and that he, deponent, knows of no other witness by whom he could prove the facts expected to be proved by said Talentin, as above set forth (unless perhaps the said Pettigrove might by possibility recollect the same). And this deponent further says, that said Crosby left this Territory to go to the United States, shortly after the close of the last October term of this Court, so that this deponent has had no opportunity of taking his deposition. That the first knowledge deponent had that said Crosby was going to leave as aforesaid, Crosby came to Portland on business, and his family were then on board of a vessel lying in the Columbia River, and about ready to sail, and did sail with said Crosby and his family on board so soon thereafter that it was impossible to have obtained the deposition of said Crosby. And this deponent further says, that he is credibly informed and verily believes, that it is the intention of the said Crosby to return to this country the coming summer, so that his deposition in this cause can be obtained before the next term of this Court. And this deponent further says, that he had notice served on the defendants, to wit, Coffin, Norton, and Lounsdale, (entitled to notice) in this cause, to take the depositions of said Pettigrove and said Talentin before a Master Commissioner in Chancery, at Olympia aforesaid, in time to have obtained their depositions before the first day of the present term of this Court, to wit, the examination of said witnesses was to have been on the 24th of April last as deponent believes, and deponent caused an agent to attend at Puget Sound aforesaid, for the purpose securing the attendance of said Pettigrove and Talentin before said Master Commissioner, at the said 24th April, but that the attendance of neither of said witnesses could be procured, and hence their testimony is not taken as the deponent expected it would have been taken, and now here. And this deponent further says, that he verily believes that the deposition of the said Pettigrove and Talentin can be obtained by the next term of this Court, and that he intends to obtain them. And this deponent is informed by his council, James McCabe, to whom he has fully and fairly stated his case, that the testimony of the above witnesses is material and necessary for the deponent, and that he cannot safely proceed to trial of this cause without said depositions, which advice deponent verily believes to be true. And this deponent further says, that this application is made, not for the purpose of delay merely, but only that justice may be done.

J. L. PARRISH.

Subscribed and sworn to before me this 5th day of May, A. D. 1852.

Endorsed: Washington District Court. In Chancery. J. L . Parrish *vs.* D. H. Lounsdale *et al.* Affidavit for continuance. No. 12. Filed 9th May, 1857. Filed on this 5th day of May, A. D. 1852.

R. WILCOX,
Clerk.

JAMES McCABE,
of Counsel for Comp't.

TERRITORY OF OREGON,
Washington County, ss.

District Court of the United States of America, for the Second Judicial District of the Territory of Oregon, within and for the County of Washington.

In Chancery.

JOSIAH L. PARRISH,
vs.
LEONARD HARRIS, THOMAS STEVENS, ZACHARIAH C. NORTON, and A. P. DENNISON, trading under the name and firm of Norton & DENNISON, STEPHEN COFFIN, D. H. LOWNSDALE, and W. W. CHAPMAN, Defendants.

Justice fees, $41 50, paid by compl't.

Deposition of witnesses produced, sworn, and examined in the above entitled cause, now pending in said court, taken on the part of said complainant before me, the undersigned, Anthony L. Davis, a Justice of the Peace in and for said county, at my office in the city of Portland, in said county, on the 29th day of March A. D. 1852, commencing at 9 o'clock A. M. of said day, and in accordance with a notice thereof of the taking of depositions from said complainant to said defendants, with affidavit of due service endorsed thereon, attached to, and herewith returned.

A. L. Lovejoy was introduced and duly sworn, says :—

Int'r. 1st. Are you acquainted with the parties to this suit?

Ans. I am acquainted with Chapman, Coffin, Stephens, Lownsdale, Capt. Norton and Dennison, of the defendants, and Josiah L. Parrish, the complainant.

Int'r. 2d. Were you formerly one of the owners of the town site of the now City of Portland, in the County of Washington?

Ans. I claim to have been of one individual half in company with Francis W. Pettigrove, in the year A. D. 1845.

Int'r. 3d. Was it, or any part of, surveyed out into town lots?

Ans. I think it was.

Int'r. 4th. Was Front Street laid out among others?

Ans. It was—commencing in the vicinity of the *Times* Printing Office and the Post Office, and running down the Willamette River to the line dividing the town claim and the court claim, allowing space for a street at the beginning and termination, running a straight line from point to point, without any regard to the bank of the river.

Int'r. 5th. From the appearance of the houses now on the westerly side of Front Street, does it appear as if they are where the street was then intended to be, or has it been changed?

Ans. I think they are on the line as when laid out.

Int'r. 6th. At the time of laying out this town of Portland, what was the understanding in reference to the levee or river bank being public property or private property?

Ans. All from the west line of the street to the river was to remain as public property, open and free.

Int'r. 7th. Was that Mr. Pettigrove's understanding, as well as your own?

Ans. It was my understanding that Mr. Pettigrove and myself agreed perfectly in the premises.

Int'r. 8th. When and to whom did you dispose of your interest in the premises, if at all?

Ans. In the fall of A. D. 1845, I sold to Benjamin Stark, Jr., all my right, title, and interest in the premises.

A. LAWRENCE LOVEJOY.

Being cross-examined by the deft's.

Int'r. 1st. Was there any lots sold to any persons previous to your sale to Benj. Stark, Jr.?

Ans. There was not: to the best of my recollection there was reservations made to ourselves, one of myself of two acres, and one to F. W. Pettigrove, of two acres.

Int'r. 2d. Was Thomas Brown authorized by F. W. Pettigrove and yourself to make a plat of the town of Portland as surveyed by him?

Ans. I think he was and so directed.

A. LAWRENCE LOVEJOY.

D. B. Hannar was introduced as a witness, and was sworn, deposeth, and saith:—

Int'r. 1st. Do you know the parties to this suit?

Ans. I know the complainant, and most of the defendants.

Int'r. 2d. Did you ever have a negotiation with any of these defendants for any property in the town of Portland, in Washington County, O. T.?

Ans. Either early in A. D. 1850, or the latter part of the year A. D. 1849, myself, Messrs. Chapman, Coffin & Lownsdale had a conversation in reference to the purchase of property in Portland, but I never made any purchase.

Int'r. 3d. State in what particular property, and in what part of the town it was in that you wished to purchase.

Ans. I proposed to purchase in different parts of the town, but in particularly in the fraction where Coffin's large building stands; but, at the time Mr. Coffin, of whom I was proposing to buy, objected, and stated that he was not ready to sell the property in that fraction that I wished to purchase in. But at the same time stated that he was endeavoring to purchase of Mr. Hearty and some others a fraction that they were then on, that was lying on the river. Mr. Coffin showed me a plat of the town, and I discovered that the streets were sixty feet wide, which left a fraction between the river and the street, which prompted me to propose to buy that fractional property.

Int'r. 4th. What did Mr. Coffin say were his intentions in reference to the grounds along the river remaining open to the public?

Ans. I never could get a definite answer.

(Objected to by the defendants.)

Int'r. 5th. What did Mr. Coffin was his object in purchasing the strip of land of Mr. Jones that was on the river?

Ans. It was my understanding that if he purchased of Jones, he would then throw it all open to the public. I do not recollect that Mr. Coffin told me so. I was with Mr. Coffin about that time very frequently, and I drew my inferences in this matter from him as well as from others.

Int'r. 6th. Would the value of the property on the west side of Front Street be injuriously affected by building houses in front thereof on the river?

Ans. If I owned property on the west side of Front Street I should consider it would be injured by persons building business house in front of it on the river. I do not know by whom the plat of said town of Portland was made.

Int'r. 7th. In whose hands was this plat?

Answer. In Mr. Coffin's hands.

Complainants' counsel here requested that the witness sign the direct examination; but the defendants objected until the cross-examination be closed. (Objection sustained.)

Cross-examined by Defendants.

Int'r. 1st. At the time mentioned in your answer to the second interrogatory, when you had a conversation with Stephen Coffin in regard to purchasing property in Portland, were there any improvements and possession between Front Street and the river? and if so, where and what were they, and by whom occupied?

(The complainant's counsel objects, and the answer is taken subject to the objection.)

Ans. There were improvements. There was a house on the bank of river that was called a Warehouse on the third block below Washington Street on the river. There was a wharf or part of a wharf

on the river; I think it was on the south side of Washington Street, or it may be possible, a part of it might have been in Washington Street; there were other improvements in the upper part of the town; one or two houses on the east side of Front Street, but I cannot describe them. It was my impression that they were occupied by Mr. Hearty and Mr. Jones; as to the occupation of the warehouse, it was my impression that it belonged to Chapman Coffin and Lounsdale, and I came to the conclusion from the fact that I wanted to purchase the ground it stood on from those individuals.

Int'r. 2d. State, if you can, when you first knew of the property east of Front Street being asserted or claimed to be public.

(The complainant's counsel objects, and the answer is taken subject to the objection.)

Ans. I do not recollect as to the time at all; my impression is that the first time I heard was about the time that the injunction was filed.

Re-examined by Complainant's Counsel.

Int'r. 1st. The wharf is now gone. I do not know whether the houses in the upper part of the town are yet there or not. They were above where the post-office now stands. I started to California in August, A. D. 1848. I spent the most of my time for two years in California. Since June, 1850, there three times.

D. B. HANNER.

William Warren, a witness produced by the complainant, was objected to by the def'ts, and required him to be put upon his *voir dire;* he was, therefore sworn to tell the truth, the whole truth, and nothing but the truth, relative to his interest in this suit, deposeth :—

Int'r. 1st. Are you directly, or indirectly interested in the event of this suit?

Ans. Not at all.

Int'r. 2d. Are you, or are you not interested in the subject matter in controversy?

Ans. I have no interest, further than writings obtained from Mr. Coffin, which places me on the west bank of the Willamette, in front of the Warren House; I have signed no papers to have this suit carried on, nor paid any person anything for the purpose of having it carried on.

Int'r. 3d. Have you any interest in keeping any one from building in front of the Warren House?

Ans. I have. The Warren House stands on block twenty-six, lot (4) four. I claim an interest in the land in front of the Warren House on the west bank of the Willamette River to said river.

Int'r. 4th. Do you claim to be proprietor of a portion of the Portland claim, to wit, the *the* lower portion?

The witness demurred to the question, on the account that he was not bound to show, or expose his title, as the question is irrelevant.

And the objection is sustained. The defendants still insist on his answer, which was overruled.

The defendants then objected to the witness being sworn in chief, because the witness is interested, and for not answering. The complainants insisted on his being sworn in chief, subject to the objection, which was so ruled by the Court.

The witness was then sworn in chief.

Int'r. 1st. Do you know the parties to this suit?

Ans. I do.

Int'r. 2d. Do you reside in the City of Portland, and if you do, how long have you resided in it?

Ans. I do; and have since *since* the 4th day of November, 1847.

Int'r. 3d. What have you heard the defendants, or any of them say, relative to the levee, or river bank in Portland?

(The defendants object, because it is leading and illegal, and the answer is taken subject to the objection.)

Ans. In the latter part of 1849, when I came from California, Mr. Lowndsale went out on the bank with me, and I showed him a lot that I wished to purchase, and he said that he did not intend to sell any lots there, or have any buildings put up; and I have heard him at one or two public meetings express himself in the same way, and that it was not his wish; and I have heard Mr. Coffin express himself in about the same way. I recollect at one time in a conversation with him relative to Mr. Jones, he expressed himself that he should use his endeavors to have him moved off on the river.

Int'r. 4th. Where was this lot that Mr. Lownsdale offered to you?

Ans. It was the one north of Stark Street, on the river bank.

Int'r. 5th. Have you ever heard A. L. Lovejoy, or F. W. Pettigrove say any relative to setting aside the ground on the bank of the river for a public ground for the use of the town of Portland?

(The defendants objects to the int'r. as being leading and illegal, and the answer was taken, subject to the objection.)

Ans. I have never had a conversation Mr. Lovejoy, he has not been a proprietor since I have been in the country, but I have had conversation with Mr. Pettigrove. There was two plats that Pettigrove showed me, and there was no lots or blocks laid out on them, on the strip of land between Front Street and the river; and he stated to me that he did not intend to sell any lots on the bank of the river, or have them built on. When I objected to a lot that Mr. Pettigrove offered to sell to me on the account of its being near a slaughter house, that was on the bank of the river, Mr. Pettigrove told me that it was there temporarily, and it could be moved at any time, as he did not intend to let buildings go up on the river bank. This is the same building alluded to by Mr. Hanner on his examination to day, changed to a storehouse.

Int'r. 6th. Whether would property be worth more or less on the

west side of Front Street, in consequence of having buildings erected along the river?

Ans. Property would not be worth as much on the west side of the street if it was built up in front on the river as if it was not.

Examination continued until to-morrow morning 7 o'clock A. M.

March 31st, A. D. 1852, 7 o'clock A. M., the examination continued.

Cross-examined by the Def'ts.

Int'r. 1st. You spoke of some plats that was shown to you, did you notice those plats?

Ans. I noticed them as far as this, one of them was a plat of the first part of the town laid out. I think the other was a plat of the whole town after the addition was laid off.

(The defendants objected to the witness answering in any other way than in the affirmative or negative.)

Intr. 2d. Did you notice any fractions between Front Street and the river?

Ans. No, to the best of my knowledge it was all open between Front Street and the river. There was neither lots or blocks marked on the plat or plats between Front Street and the river.

Intr. 3d. Do you recollect the width of any of the streets as marked on those plats?

Ans. I do not recollect.

Intr. 4th. Were there any improvements between Front Street and the river, either houses or wharf? If so, what and where were they?

(The complainant's counsel objects this question, the answer taken subject thereto.)

Ans. There was a slaughter-house nearly opposite the Warren House on the bank of the river, on the third block below Washington Street, and a wharf on the south side of Washington Street.

Intr. 5th. Do you know whether that house is now there?

Ans. It is.

Intr. 6th. Do you know of its having been used as a warehouse or storehouse up to the present?

Ans. I know that it has been, but I do not know as it is now.

Intr. 7th. When was the first time you ever heard of the citizens of Portland setting up a claim to the fraction lying between Front Street and the river?

(The complainant's counsel objected to this question as being illegal, and the answer is taken subject thereto.)

Ans. I have always understood them to claim the bank of the river ever since I have been in the town of Portland.

Intr. 8th. What time did you come to the town of Portland?

Ans. In November 4th, A. D. 1847.

Intr. 9th. At what time did you propose to buy of D. H. Lowns-

dale on the river bank below and north of Washington Street, and between the west side of Front Street and the river?

Ans. I proposed to buy of D. H. Lownsdale in March, A. D. 1849.

Intr. 10th. Was it before or after you went to California?

Ans. It was after I came from California.

Intr. 11th. Was this after D. H. Lownsdale had purchased of F. W. Pettigrove the claim on which Portland is situated?

Ans. It was after Mr. Lownsdale had told me he had purchased of F. W. Pettigrove the claim.

Intr. 12th. Did you ever know of D. H. Lownsdale using the house known (formerly as the slaughter-house) for the purpose of storing goods of any kind?

Ans. I do not know that he actually did, but I know of a man by the name of McKinsey who had been in Mr. Lownsdale's employ fitting it up; but I do not know that McKinsey was then in Mr. Lownsdale's employ at that time.

Intr. 13th. Do you know of Mr. Lownsdale having stored a barrel of fish in the house above referred to?

Ans. Yes. Mr. Lownsdale told me it was his, and it was in that store.

Intr. 14th. Was you present when the deposition of A. L. Lovejoy was taken in this case?

Ans. I was not.

Intr. 15th. Do you know of A. L. Lovejoy and F. W. Pettigrove ever having made a survey of Portland, beginning at the upper end of the town and running to the lower end?

Ans. No, I never knew of their having done so, nor never heard of their having made one.

Intr. 16th. Did A. L. Lovejoy ever reside in the town of Portland?

Ans. No, he did not; he sold his interest before I came here.

Intr. 17th. Do you know from your own knowledge that A. L. Lovejoy ever had an interest in the town of Portland?

(Taken subject to the objection of the complainant.)

Ans. I never saw any instrument of writing to that effect. I do not know that he had.

Int'r. 18th. State if you know by whom the two plats that were shown you by Mr. Pettigrove were made, and if they exhibited any lots between Washington and Oak Streets, and east of Second Street.

(The complainant's counsel objects to the question, and the answer was taken subject thereto.)

Ans. I do not know by whom they were made. To the best of my recollection the lots and blocks were marked on the plats, but not staked off on the ground, but was inclosed by a fence with a division fence, where Stark Street now runs.

Question asked by S. Coffin, one of the def'ts. Please state who you considered the property on the bank of the river belonged to at the time you proposed to purchase of D. H. Lownsdale.

(The complainant's counsel objected to this question as being irrelevant.)

Ans. I supposed, as Mr. Lownsdale claimed it, that it belonged to him. The citizens also claimed it.

Int'r. 19th. Was the plat of the upper part of the town, of which you spoke as being shown you by F. W. Pettigrove, a plat of that part of the town laid off by Lovejoy & Pettigrove?

Ans. I do not know.

Int'r. 20th. Did the plats shown you by Pettigrove, to which you have alluded, so far as it regards Front Street, correspond with the description given by Lovejoy in his deposition in his answer to the fourth int'r. and now read to you?

Ans. I think it did not altogether; that from somewhere about where Mr. Stephens' house stands on Front Street there was a slight angle to the west, in the upper part I think it did correspond.

Int'r. 21st. Do you think the houses on Front Street, from block 27th to block 8, now stands where the west side of Front Street was represented to be on those plats referred to?

Ans. I think they do.

Int'r. 22d. Who were the persons who told you that the ground east of Front Street was public ground, or belonged to the town.

Ans. It was a common report. I heard John Waymise, James Terwilliger, Job McName, F. W. Pettigrove, N. Crossly, Jun., that is all I can remember at present at the time. There was seven houses in town that I can recollect, and there may have been two or three more at the time F. W. Pettigrove claimed a wharf on the river above Washington Street.

Int'r. 23d. Did Coffin doubt the right of Jones to remain on the bank of the river if he chose to do so?

Ans. He did doubt it.

Int'r. 24th. In what manner did he express himself as doubting it?

Ans. He expressed himself in this way, that he did not think that the lots on the bank of the river ought to be sold or built on, and that he thought they had no right to sell them. Witness thinks that the property had been sold to Mr. Jones before Mr. Coffin was a proprietor of the town of Portland. I think this conversation took place on the bank of the river between Washington Street and Taylor Street, some time in 1849. It was in the summer. I do not recollect that any person was present at the time of the conversation. There might have been.

Int'r. 25th. At the time you have alluded to, when Pettigrove showed you the plats, did Lovejoy or Stark claim to be owners or part owners of the town?

Ans. Stark claimed to be part owner.

Int'r. 26th. Were there any field notes or writing upon the plats you saw declaratory of streets, or explanatory of the plats?

Ans. I think there were, but I do not know what it was.

WILLIAM WARREN.

James Stephens, a witness introduced by the complainant, was objected to by the defendants on the account of interest in the event of this suit, and asked him to be sworn on his *voir dire*, which was accordingly done.

Int'r. 1st. Are you interested in the event of this suit?

Ans. No, I am not.

Int'r. 2d. Have you contributed, or promised to contribute, for the purpose of carrying on this suit?

Ans. I have not promised to pay any sums of money for to have it carried on. I have paid five dollars towards the expense of Mr. King's travelling to Oregon city, when he went there for the purpose of taking out the injunction.

Int'r. 3d. Did you sign the petition for the injunction and make affidavit to that petition, and did that petition or any other paper signed by you bind you to pay any part of the expenses of this suit?

(The plaintiff's counsel objects to this interrogatory.)

Ans. I signed the petition, but I think I never made any affidavit to it; I never thought or understood that the petition, or any other paper signed by me, bound me to pay any of the expenses of this suit.

Int'r. 4th. Do you at present own any town lot or lots in the city of Portland?

Ans. I think I do, but not in the first or second survey of Portland; and I believe I purchased them since the injunction was granted.

Int'r. 5th. Does those lots run to the river? and how are they bounded on the eastward?

Ans. I do not think they run to the river; but there was to be nothing between them and the river; it was to be open to the public. I believe they are bounded by a street on the east.

Int'r. 6th. Now, state the number of those lots.

Ans. The number is block No. 112, and lots No. 4 and 6.

Int'r. 7th. Will or will not those lots be increased in value if the complainant prevails in this suit?

Ans. I do not think they will for this reason, that if the front in that part of the town where the injunction will prevail be shut up, and the ground before those remain open, the value of my lots will be increased.

Int'r. 8th. Has there not been a subscription in the hands of Thos. G. Robinson, or other persons, on which your name stands as a subscriber for twenty-five dollars, or some other sum, towards the expenses of this suit?

Ans. I do not recollect of signing any such paper; I may have

signed it, but do not recollect that I did. I have been very careful not to sign any such papers, altho' I might.

Int'r. 9th. Do you now intend, in case this suit goes against Mr. Parrish, otherways to contribute anything towards the expenses of it?

(Objected to by the complainant's counsel.)

Ans. I told Mr. Parrish rather than it should not be decided now that I had rather pay something out of my own pocket. I felt an interest in the growth of the town, and wished to have the question settled.

Cross-examined by the Comp't's Counsel.

Int'r. 1st. Is this plat, which is now shown you, and on which your lots are marked as on block No. 112, either of the plats made while F. W. Pettigrove was the owner of the town, or is it another and different plat, and does it in any respect correspond with those plats or either of them?

Ans. It is not. I saw two plats in the hands of Pettigrove; they were smaller than this, and did not include so much ground.

Int'r. 2d. Are either of your lots on that portion of the ground covered by those plats you saw in the hands of Pettigrove?

(Objected to by the defendants.)

Ans. I believe they are not.

Int'r. 3d. What is the distance up the river from the Times' Printing Office and Post Office to where your lots are situated?

Ans. I think it is seventy or eighty rods.

Int'r. 4th. Did you not pay more for those lots in consequence of its being an open front than you otherwise would have done?

Ans. I should not have paid so much for them, if I had thought there would have been building between them and the river.

(The testimony of Mr. Stephens objected to by defendants on the grounds of interest.)

James Stephens sworn in chief, says:—

Int'r. 1st. Where do you reside?

Ans. On the east side of the Willamette River, nearly opposite the city of Portland.

Int'r. 2d. How long have you resided there?

Ans. I moved my family there the 1st day of November, 1845.

Int'r. 3d. Are you acquainted with the parties to this suit?

Ans. I believe that I am.

Int'r. 4th. Do you know from your own knowledge, or from the statements of Pettigrove or Lovejoy, how the strip of land along the river east of the west line of Front Street was to be regarded, used, and occupied?

(Objected to by the defendants' counsel.)

Ans. I never conversed with Lovejoy on the subject, but I have frequently with Pettigrove, and he has always refused to sell any property on the bank of the river, and said that he intended that it

should remain open as a wharf, that after awhile he intended to lay off more ground on the river, and that then he would sell me a piece on the river above the then town near where the saw mill now stands.

Int'r. 5th. Have you heard Mr. Lownsdale, or any of the other defendants, say anything relative to the same matter?

Ans. Yes. I have heard Mr. Lownsdale, that in his absence there had been some lots sold on the river bank to Mr. Harty and Jones, contrary to his instructions and wish, and that he would try to get them back again, and leave it open for public use.

Int'r. 6th. Do you know of Mr. Pettigrove having sold any lots along the west side of Front Street with the understanding that the ground between Front Street and the river should be left open?

(Objected to by the defendants.)

Ans. I have heard him say when offering to make sales, that those lots were valuable, because the ground between them and the river would be left open, that there were to be no buildings go up on that ground.

Int'r. 7th. What have you heard Mr. Lownsdale, or any other of the defendants, say in reference to the river bank, and the value of lots or the sale of lots on the western side of Front Street?

Ans. Mr. Lownsdale always held out the idea to me that I must give more for lots on the river where there was not buildings allowed to go up in front of them.

Int'r. 8th. What were the lots on the west side of Front Street usually called?

Ans. They were called front lots.

Int'r. 9th. Who have you heard call them front lots?

Ans. I think it was a common understanding, they were called so by almost everybody.

Int'r. 10th. Were they so called by the deft's?

Ans. Yes, they were.

Int'r. 11th. What would be the effect on the value of property on the west side of Front Street, provided it was built up on the bank of the river in front of them, instead of being left open?

Ans. It would have a very injurious effect.

Int'r. 12th. Was the land where your lots are marked out on either of the plats shown you by Pettigrove?

(Objected to by the defendants.)

Ans. It was not; neither of the plats shown me Pettigrove extended so far up the river.

Int'r. 13th. In mentioning the blocks, to wit, No. 112, on which your lots are situate, had you reference to any other lot than the one shown you by the deft's on your examination on your *voir dire*, and referred to by complainant on cross-examination on your *voir dire?*

(Objected to by the defendants.)

Ans. I had not. I do not know that I ever saw any other plat of them lots.

Int'r. 14th. Was there any blocks, or lots marked on the bank of the river on either of the plats shown you by Pettigrove, and on the ground which was said to be open and public ground?

(Objected to by the def'ts.)

Ans. I never saw any marked on them plats between Front Street and the river.

Int'r. 15th. How recently is it that the attempt has been made to claim this river bank as private property by the defendants?

(Objected to by the defendants.)

Ans. The first knowledge I had of it was either in the latter part of November or the first of December, 1849. When I returned from California, I saw a house on the bank of the river, and then saw Mr. Jones, and he informed me that he had bought a lot, and I then saw Mr. Lownsdale, and he stated that it had been sold in his absence, and he said, as I have stated before, that he would to try and exchange with him and get it back.

Int'r. 16th. Which way from your lots is the saw-mill that you have before spoken of?

Ans. It is north.

The defendant's counsel produced a paper, of which the following is a true copy, to wit:

At the close of the examination in chief, defendant's counsel request the Commissioner to make the plat referred to by complainant's counsel in his first question on the cross-examination on the voir dire as an exhibit.

A. CAMPBEL,
C. for Def'ts, Lownsdale & Norton.

To this the complainant's counsel objects for the following reasons, to wit: that the said plat first introduced by the def'ts on the examination of the witness on his voir dire, defendants' counsel states that the said plat was not offered in evidence as produced in the cause, or introduced in the cause as evidence by said def'ts. Subject to the decision of the Court, the plat is marked exhibit (A).

Defendants' counsel, subject to his protest against Mr. Stephens' admissibility on the ground of interest, cross-examines.

Int'r. 1st. Was there at any time, and when, a wharf put up on the river bank in front of block number one in said Portland?

Ans. There was a kind of a wharf put up and covered some time in the summer or fall of 1848, A. D.

Int'r. 2d. By whom was that wharf put up, and how used?

Ans. I understood it was put up by Pettigrove & Stark; they both told me that they put it up; vessels landed and discharged at it, and anybody and everybody that pleased landed goods on it.

Int'r. 3d. Do you know whether wharfage was or was not charged against vessels laying or landing goods there?

Ans. I know of no wharfage being charged for laying there, or for landing goods on it.

Int'r. 4th. Do you know a building called the slaughter-house, erected about the year 1847, at or near the bank of the river in Portland? By whom was it erected and used?

Ans. I am not certain as to the time; there was a building erected by Pettigrove & Stark, I think for a slaughter-house and packing beef in.

Int'r. 5th. Do you know in what year the Cayuse war was going on, and was beef stored in that building during that period? (Complainant's counsel objects.)

Ans. I think it continued part of 1847 and part of 1848, and there was beef stored in it part of that time.

Int'r. 6th. Was not that beef so stored there the year after the building was used as a slaughter-house?

Ans. It was some time in the year after, but I do not think the beef remained in the house a year after.

Int'r. 7th. Has not that building been used as a warehouse from that time to the present, and has not the sign storage and warehouse, or to that effect, been up on it during that time? (Complainant's counsel objects.)

Ans. I think it had been used occasionally for storage ever since, but I do not think the sign has been on it ever since.

Int'r. 8th. Do you know where the northeastern corner of block No. 1 in Portland is? Is there a store on that corner?

Ans. I do not know where that corner is.

Int'r. 9th. Do you know a store occupied by L. Snow, and a row of buildings on the west side of Front street, extending therefrom southerly?

Ans. Yes, I know that block and buildings.

Int'r. 10th. Is not the northeast corner of that store exactly on the same corner of the block in which it is situated, and is not the front of that row of buildings exactly on the line of the west side of Front street, as you have always known it?

Ans. I understand the store to be on the N. E. corner of the block, and the row of buildings to be on the west line of Front street.

Intr. 11th. You have stated a conversation with Mr. Lownsdale, in which you say he told you that lots were sold to Jones & Hearty in his absence contrary to his wishes and intentions; are you as confident of the correctness of your recollections of every other conversation you have stated as you are of that one?

Ans. Some things I recollect more positive than I do others.

Intr. 12th. Are you positive and distinct in your recollections of this conversation?

Ans. I am positive as to a conversation to that effect.

Intr. 13th. If it should turn out that Lownsdale himself sold both those lots to Jones in the last of 1848 or 149, and Jones had sold

one of them to Hearty, would you not think it possible that you might be mistaken in your recollection of that conversation?

Ans. I do not think I am mistaken.

JAMES B. STEPHENS.

Sherry Ross, a witness introduced by the complainants, defendants waiving notice, was objected to by the def'ts on the account of being interested, and requested him to be put upon his *voir dire*, he was therefore sworn to make true answers to such questions as should be asked him relative to his interest in this suit.

Intr. 1st. Are you interested in the event of this suit?

Ans. I do not know but what I am, and I do not know that I am.

Intr. 2d. Are you the owner of any town lots in blocks on Front Street?

Ans. I am. The blocks are on Front Street, but the lots are on First Street, between Front Street and First Street.

Intr. 3d. Are these lots north or south of the post office?

Ans. I think they are south, pretty near the post office.

Intr. 4th. Are not some of your lots north of the post office?

Ans. Yes, on Second Street.

Intr. 5th. Have you paid or subscribed, or promised to pay anything, towards the expenses or costs of this suit?

Ans. I paid five dollars about two years ago towards the getting out this injunction. I have not subscribed or promised to pay.

Intr. 6th. Did you sign any and what petition for the complainant in this suit, and does that petition bind you to pay a share of the expenses?

Ans. I signed a petition. I believe it was to prevent building from being put on land lying between Front Street and the river. I do not know whether it binds me to pay any part of the expenses of this suit or not.

Cross-examined by Complainant's Council.

Intr. 1st. Are you aware that you have ever signed any paper making yourself responsible for any costs in this suit?

Ans. I am not.

Intr. 2d. Have you by verbal agreement made yourself liable for any of the costs in this case?

Ans. I have not.

The defendants' counsel objects to the witness being sworn in chief on account of interest.

The witness was sworn in chief.

Intr. 1st. Do you know the parties to this suit?

Ans. I do.

Intr. 2d. Have you heard Mr. Lownsdale or any other of the def'ts say anything to this strip of land along the river, and if so, what did he or they say?

Ans. I heard Mr. Lownsdale speak about it; he said that he did

not have anything to with tracts sold between Front Street and the river; he said further that Chapman and Coffin sold lots between Front Street and the river, and if they had a right to do so that he had, and that he intended to do so.

Intr. 3d. What did Lownsdale say in respect to the property along the river between it and Front Street being public property?

(Objected to by defendants' counsel.)

Ans. I heard him say that he never gave his consent to have the property sold, and that did not have anything to do with the sales that had been made. This took place about the time Capt. Norton's building was going up in the spring of 1850.

Intr. 4th. Did you ever hear Pettigrove say anything in reference to this strip of ground along the river?

(Objected to by the def'ts' counsel.)

Ans. I heard him say that it was to be left open.

Int'r. 5th. Was the ground along the river in front of the City of Portland laid out into lots and blocks by the first survey?

(Objected to by the def'ts' counsel.)

Ans. I never saw the first plat, but always understood from Pettigrove and others that it was not.

Int'r. 6th. What was the general report in that respect?

(Objected to by def'ts' counsel.)

Ans. I came to town in 1846, and bought lots with the understanding that it was to remain open, and that understanding was general.

Int'r. 7th. How recently has the defendants, or other individuals, assumed to control this strip of land spoken of, as private property?

(Objected to by the def'ts' counsel.)

Ans. In the fall of 1849, Jones and Hearty was living on this strip of land and claiming it as private property; in the month of July, 1850, Dennison and Norton commenced erecting a building; that was the first of any person that I know of having set up any claim.

Cross-examination, subject to protest against its admissibility.

Int'r. 1st. Where is that F. W. Pettigrove that you have spoken of?

Ans. I heard Mr. Hastings say to-day that he was at Puget Sound, in Oregon Territory.

Int'r. 2d. Have you lately seen Pettigrove, and if so, when and where?

Ans. When I saw him last, he was in this town of Portland, I think about two months ago.

Int'r. 3d. About how long was he here in Portland on that occasion?

Ans. I do not know how long he was here, I saw him on some two or three different days.

Int'r. 4th. Do you not know that Pettigrove and Stark had a

wharf and slaughter-house on that strip of land you speak of long before Jones or Hearty lived upon it?

Ans. I know that in the fall of 1846 John Waymire put up a wharf for Pettigrove somewhere near the foot of Washington Street. There was a house put up in 1847 for Stark and Pettigrove, intended for a slaughter-house, some two hundred yards below Washington Street, on the bank of the river; it was used at one time to store away bacon; there was a sign up of storage. Norris & Co. occupied it for a time; Baker & Hastings also occupied it.

Int'r. 5th. Do you know whether Mr. Job McMame was or was not forbidden and stopped by Pettigrove from grading down the bank in front of block number two, or some other part of said strip, and when?

Ans. I have understood that he was forbid by Pettigrove, but I do not know whether he did stop or not; it was the common report over town that he was forbid by Pettigrove; what I know about it is mere hearsay, I know nothing of myself. I believe it was in 1847 or 1848, will not be certain.

Re-examined by Complainant's Counsel.

Int'r. 1st. The wharf of which you have spoken, was it or was it not a public wharf?

Ans. I think it was a public wharf. I do recollect there was a difficulty with some captain of a vessel and Pettigrove, and that he laid off in the river; I supposed that it was about the wharfage.

SHERRY ROSS.

Albert E. Willson was introduced by the complainant and sworn.

Int'r. 1st. Where do you reside?

Ans. I have no particular point of residence.

Int'r. 2d. Have you formerly resided in the City of Portland, Washington County, O. T.?

Ans. I have.

Int'r. 3d. What was the general report in reference to the river bank along in front of Portland?

(Objected to by def'ts' counsel.)

Ans. At the time I resided here, it was the general report that it was public property.

Int'r. 4th. At what time and how long did you reside here?

Ans. I cannot say exactly how long or what time, but was in the winter of 1846 and 1847, and in the summer of 1847, and I might have been here longer.

Intr. 5th. Were you a part owner of Block No. one in Portland?

Ans. I was part owner in the block which the store now occupied by L. Snow, is on the N. E. corner.

Intr. 6th. Who were part owners with you in said property or block?

Ans. F. W. Pettigrove and David McLaughlin.

Intr. 7th. Did you, Pettigrove, and McLaughlin, sell that block? and if so, to whom?

Question by def'ts' council. Was the sale made by a deed or instrument of writing? (The complainant's counsel objects to the def'ts' counsel asking the question at this stage of the proceedings.)

Ans. It was.

(The last question asked by complainants' counsel objected to by deft's counsel unless the instrument of the sale be produced.)

Ans. We sold it to L. C. Gray early in 1849.

Cross-examined by def't's counsel.

Intr. 1st. Do you know a wharf and slaughter-house built at or near the bank of the river in Portland in the years 1846 or 1847? By whom were they respectively built and occupied, and how long, and where were they situated?

(Objected to by complainants' counsel.)

Ans. I do know a wharf and slaughter-house. The wharf was there in 1847. The slaughter-house, my impression is, was erected the same year. It was understood that F. W. Pettigrove and B. Stark built them. The wharf was occupied without charge by any one who saw fit to make use of it. The slaughter-house was made use of by Benj. Stark for slaughtering cattle and packing beef. I cannot say how long it was so occupied. The wharf was at the end or near the end of the street passing down by the block of which I have spoken. The slaughter-house is very near the bank of the river, three hundred feet or more below the wharf.

Intr. 2d. Do you know of Pettigrove's claiming wharfage from a Capt. Adams for a vessel lying at that wharf?

Ans. I do not.

Intr. 3d. Do you know of Pettigrove forbidding or stopping Job McMamee from grading or cutting down the bank opposite Block No. two, or any other part, claiming the same as his own property?

(Objected to by complainants' counsel.)

Ans. I do not.

Intr. 4th. Look upon the paper now shown you and marked exhibit (*B*). Is the name or signature, Albert E. Wilson, thereto in your handwriting, and were you present, and did you witness the execution of that instrument by F. W. Pettigrove and subscribe the same as a witness.

(Objected to by complainants' counsel as being no part of the cross-examination.)

Ans. The signature, Albert E. Wilson, thereto is in my handwriting. I witnessed the signature of F. W. Pettigrove and subscribed my name as a witness thereto.

Re-examined by complainants' counsel.

Intr. 1st. Whether the slaughter-house spoken of by you was not

a mere temporary thing built for the accommodation of the army in the butchering beef for the Cayuse war?

(Objected to by def'ts' counsel.)

Ans. I do not. It was a temporary building, but I do not think it was built for that purpose.

Re-cross-examination by def'ts.

Intr. 2d. Is not that building still standing and in use?

Ans. I am not positive, but I think it is.

ALBERT E. WILSON.

The complainants introduced Wm. M. King as a witness, and the defendants' counsel objected on the account of his being interested in the event of this suit, and requested that he should be sworn on his *voir dire*, which was accordingly done.

Intr. 1st. Have you any interest either directly or indirectly in the event of this suit?

Ans. I have not.

Intr. 2d. Do you own any town lots, the value of which can be increased by the success of the complainant in this suit?

(Objected to by the complainants' counsel.)

Ans. No answer to the above question, intr. 2d.

The def'ts' counsel objected to the witness being sworn in chief.

The witness was sworn in chief.

Intr. 1st. Are you acquainted with the parties in this suit?

Ans. I am.

Intr. 2d. How long have you resided in this place?

Ans. From the 19th of September, 1848, to the present.

Intr. 3d. Do you know anything referring to the lands along the bank of the river in Portland, what use was intended to be made of them by the original proprietors? If so, state.

(Objected to by the def'ts.)

Ans. When the injunction was obtained, I called on Mr. Pettigrove and Mr. Lovejoy; they told me (this was after they had disposed of their interest) that the front here was a public front; that was the basis on which the injunction was obtained, on their statements and the statements of others, I swore to my belief of the statements of the bill. When the bill was granted, Capt. Norton stopped his building operations, and it was suspended for some considerable time under the order of the court. In the mean time I went to California, and operations commenced again, and when I returned, Capt. Norton's building was progressing again. In another conversation with Mr. Pettigrove, in the winter of 1850, he made the same statements as before, and was very angry with Mr. Lownsdale. Some time in 1850, I had a conversation with Mr. Lownsdale relative to a fractional lot sold, before that time to Mr. Jones, up near the steam mill. I consulted with Mr. Lownsdale as to the pro-

priety of selling lots in front. He thought it was bad policy, and would get them back, if he could reasonably, and did attempt a negotiation for the same, but failed; the reason for his trying was, that he thought it was best to keep the front open; since that time their statements have changed about as their interest have changed.

Int'r. 3d. What was the general report as to this land along the river bank, since you came to this place?

(Objected to.)

Ans. At the time of obtaining of the injunction, the general report was, that it was to be open. Some thirty or forty signed a request for the injunction; this was in 1850. Since that time it is impossible for me to say what the report was. When I first came here I knew nothing about it.

Int'r. 4th. Do you know of the complainants having any interest in a certain block situate in the corner of Front and Washington Street, in Portland City.

(Def'ts' counsel interposes the following question: Is that interest under a deed, or any conveyance in writing?)

(Complainant's counsel objects to the interposition of questions by Def'ts.)

Ans. He purchased the property somewheres in the last of 1849, or first of 1850; I think under a deed, and I think it was acknowledged before me.

(The defendants object to any questions or answers, unless the deed is produced.)

Int'r. 5th. Of whom did Mr. Parrish purchase that interest?

Ans. Of L. C. Gray. I do not know where you would call his (Gray's) residence; he was here at the time the purchase was made.

Int'r. 7th. Has the complainant continued to exercise acts of ownership over that property, or any part thereof, ever since 1849 or 1850?

Ans. He has, and has sold a portion of it since.

Int'r 8th. State whether you know, of your own knowledge, whether he has rented part of it and received the rents.

Ans. I know he has.

Int'r. State the person or persons to whom, and time or times he so rented.

Ans. He rented to Mr. D. H. Lownsdale, for the use of King, Lownsdale & Co., in November, 1850—it might have been October.

Int'r. 9th. Do you know of his having exercised act of ownership over this property before the bill was filed in this case?

Ans. Yes.

Cross-examined by def'ts' counsel, not waiving the question of inadmissibility.

Int'r. 1st. You speak of Pettigrove showing anger with Mr. Lownsdale, from the time of the purchase of the town of Portland by Lownsdale of Pettigrove; has not the growth of Portland and its

increase in value been very rapid; and has not Pettigrove shown feeling of animosity ever since against Lownsdale?

(Objected to by complainant's counsel.)

Ans. Yes, it has grown and increased in value very rapidly; at times since the purchase, he has shown feelings of animosity towards Mr. Lownsdale.

Re-examination by Complainant.

Int'r. 1st. Has not Mr. Pettigrove, at times since the purchase of the town of Portland by Mr. Lownsdale, appeared to be friendly with him?

Ans. Yes, I have seen him on friendly terms with him this winter.

WM. M. KING.

John H. Couch was introduced, notice waived by the deft's, and was sworn.

Int'r. 1st. Did you reside in this place in the fall of 1849?

Ans. I did.

Int'r 2d. Do you know of Mr. Parrish having exercising acts of ownership over the block, or any portion of it which corners on Washington and Front Street in this city?

Ans. I do; commencing about December, 1849, and has continued up to the present time, as far as I know.

Int'r. 3d. Do you know of whom he got this block?

Question by Defendants.

Did he *git* this block under any deed or instrument of writing?

(Complainant protests against the interposition of this question by def'ts.)

Ans. I do not know, I never saw any writing.

Ans. To complainants; he got the block from L. C. Gray.

Int'r. 4th. Did you see Mr. Parrish pay Mr. Gray money for the block?

Ans. I do not know personally that he paid him money, but I know that Mr. Parrish had money to pay him, and that I heard Gray say that he had paid him.

(The latter part of the answer objected to by def'ts.)

Int'r. 5th. Do you remember paying Parrish for storage of some flour stored in one of the buildings on said block, stored by Dr. McLaughlin, and others, in January or February, 1850?

(Objected to by def'ts' counsel.)

Ans. I do, for Dr. McLaughlin.

Int'r. 6th. Will you state what you know about this strip of land along the river, whether it is public property?

(Objected to by the defendants.)

Ans. I have known nothing about it for the last four years.

Int'r. 7th. What have you heard F. W. Pettigrove say while he

was the owner here in reference to the strip of land along the river in front of Portland?

Ans. I understood him to say it was public property.

Int'r. 8th. Do you know of his having bargaining or selling any lots with reference to its being public property?

Ans. No; I have not.

Int'r. 9th. In reference to these lot on the west side of Front Street, were they called front lots?

Ans. As far as I know, they were.

Int'r. 10th. Have they even been so denominated, or any of them at any time?

Ans. I have heard Pettigrove call them front lots, and he is the only one of the proprietors that I have.

Int'r. 11th. What would be the effect upon property on the west side of Front Street, in case buildings should be erected in front of them on the strip of land along the river in Portland?

Ans. I do not know. Some might consider it an advantage, and some might consider it an disadvantage.

Cross-examined by def'ts.

Int'r. 1st. Did you know of a wharf erected by Pettigrove, or any other person at the bank in front of block number one, nearly opposite L. Snow's store. When was that wharf erected, and by whom?

(Objected to by the compl't.)

Ans. I know that wharf; it was erected before I went to the States, and I went in November, 1847, by Pettigrove; I think Stark might have had a hand in it.

Int'r. 2d. Do you know of Pettigrove's charging a Capt. Adams with wharfage for a vessel at the wharf?

Ans. I do not.

Int'r. 3d. Do you know of a building erected on the bank by Pettigrove or Stark, and which of them, for a slaughter house, and when, how, and by whom has it been occupied to the present time?

(Objected to.)

Ans. I know that building erected by Pettigrove and Stark; it was erected in 1847; it was occupied as a slaughter house and packing house at first by Stark and Pettigrove; I cannot say who next occupied it; I believe that Col. Chapman has since occupied it.

Re-examined.

Int'r. 1st. Was not the wharf a public wharf, and have you not, among others, used it free of charge?

Ans. I know nothing about it, and I never laid at the wharf in a vessel in my life.

JNO. H. COUCH.

L. Snow was introduced and sworn. Notice waived by the defendants.

Int'r. 1st. Do you know whether the complainant, Mr. Parrish, is in the receipt of the rents and profits of any portion of the block commencing on Front and Washington Streets, in the city of Portland?

Ans. He is in the receipt of the rents for the store which I now occupy, and the one I formerly occupied at the other corner of the block, both fronting on Front Street. I think the street passing my store is called Washington Street. Both of the buildings of which I have spoken is in the same block; he has been receiving the rents from me since the 15th day December, 1850.

LUCIEN SNOW.

W. Seaton Ogden was introduced by complainants; notice waived; objected to by defendants on the account of interest in the event of this suit, and was sworn on his voir dire.

Int'r. 1st. Are you interested directly or indirectly in the event of this suit?

Ans. I am not.

Int'r. 2d. Are you the owner of any town lots in the town of Portland?

Ans. I am the owner of four, and one-half of one; they are four or five blocks back from the river, and south of the Ecaddemy—the undivided half lot is in the Couch claim, on the river, about two blocks below Capt. Couch's store.

(Objected.)

Witness sworn in chief subject to the objection.

Int'r. 1st. What do you know of Mr. Parrish being the owner, or any part owner, of block number one, in the town of Portland, fronting Front Street, and commencing on Washington Street?

Ans. Either in December, 1849, or January, or February, 1850, to the best of my recollection. Mr. L. C. Gray informed me that Mr. Parrish had purchased from him the block in front of Capt. Crosby's, the block on which the store in which L. Snow now trades.

(The answer objected to the moment the witness spoke of hearsay.)

Int'r. 2d. Did you see Mr. Parrish pay Gray money on account of that purchase?

Ans. I did not see Mr. Parrish pay any money, but I say Couch & Co. pay Mr. Gray, in the month of January, 1850, for Mr. Parrish, about twelve hundred dollars.

Int'r. 3d. Do you know the amount Mr. Parrish was to pay.

Ans. To the best of my knowledge it was ten thousand dollars.

Int'r. 4th. Do you know whether Mr. Parrish has continued in the possession of said property from the time of the purchase to the present time by means of his tenants, and in the receipt of the rents and profits?

(Objected to.)

Ans. I believe him to have done so.

WM. SEATON OGDEN.

The complainants introduced Thomas G. Robinson as a witness. Objected to by the defendants on the account of interest in the event of the suit, and requested that he be sworn on his voir dire, which was accordingly done.

Int'r. 1st. Are you interested in this suit?—will you gain or lose by it?

(Objected to the latter clause.)

Ans. I am interested. I should lose by it going in favor of the proprietors, because I am the owner of property that I bought as front property, and should the bank of the river be built on in front of it, the value of it would be decreased.

Int'r. 2. Will you state where that property is situated?

Ans. My upper lot number four, and block five, on Front Street. I did buy lot number three and four, in block number five, but I have sold them to Ric'd White and E. Hill. I also own a lot number two, in block number two, on Front Street; the east half of another lot in the same block.

Int'r. 3d. How near to, and in what direction from block number one does block number two lay?

Ans. Block number two is sixty feet from block number one, in a south direction.

Int'r. 4th. Have you paid or agreed to pay any sum of money towards the complainants' costs and expenses in this suit, and have you requested others so to pay? (Objected to.)

Ans. I have not paid any sum nor signed any subscription paper. I have promised to pay some money towards prosecuting the suit if it should be conducted properly to my belief, and have requested others to do so, to pay.

Int'r. 5th. Why have you promised to pay money for that purpose? (Objected to.)

Ans. I promised because I had bought property on Front Street, that had been bought from Pettigrove and Stark, as they said it was front property, and if there is houses built on the east side of Front Street on the river bank, in front of my property, I would be seriously injured. And before I bought this property, or a part thereof, I called on Mr. Loundsdale and examined the town plot, which, as well as I can recollect, he informed me that it was a true copy of the original plat laid out by Pettigrove and Stark, only the plat had been enlarged. I also found on that plat no lots marked on the bank of the river from Mr. Jones' lot to the north corner of the Portland claim at Couche's line—that from the common conversation of the citizens of Portland, and the proprietors of Portland, that the river bank, from that point to Couche's line to be kept open a public landing or levee, for the benefit of the town.

Cross-examined by Compl't's Counsel.

Int'r. 1st. You have answered that you have an interest in the

event of this suit; have you any other interest than to keep open the levee in front and near in front of your own property?

Ans. I should not.

Int'r. 2d. If the levee in front of block number one and two should be kept open by any other means than by sustaining this suit, in such case would you have any interest in the result of this suit?

Ans. If the levee from Jones' lot down to Couche's line should be kept open, then I should have no interest in this suit.

Int'r. 3d. If that levee should be kept open by means of a suit, wherein any other person than Parrish should be complainant, or by the stipulation of the proprietors of the town, in such case would you have any interest in the event of this suit?

Ans. I should not have any interest in the event of this suit.

Int'r. 4th. According to your understanding, might not this levee be opened as above stated, by stipulation or at the suit of some other person than Parrish?

Ans. Such a thing could take place.

Re-examined by Def'ts.

Int'r. 1st. In the case supposed by the last question but one, would Mr. Parrish himself have any interest in this suit? (Objected to.)

I do not know any interest that Mr. Parrish could have other than for monies that he has paid out in this suit.

The witness sworn in chief, subject to the objection of Defendants.

Int'r. 1st. Did you ever purchase any town lots in Portland?

Ans. In the fall of 1849 I bought two lots of John Waymire, they were number 3 and 4, in block No. 4, as well as I can recollect, these lots was titled to him by Pettigrove and Stark. The defendants' counsel here asked the question, was the title in writing?

Complainant's counsel objects to the interposition of this question.

Answer taken subject thereto, that the title was in writing.

The defendants' counsel objects to anything being said of title, unless the writing is produced.

Int'r. 2d. What information or suggestions, if any, did you derive from the def'ts, or any of them, in reference to these lands or any lands in Portland?

Ans. Either before or shortly after buying those lots, I called on Mr. Lounsdale, and examined the town plat of Portland (Defendants object to anything being said about the town plat of Portland, unless it be produced), which, as well as I can recollect, Mr. Lounsdale, the proprietor of Portland, that it was a true copy of the plat of the town, laid out by Pettigrove and Stark, and that I found my lots marked on *on* that plat, as near as I can relate, where I have described them, and that I saw no town lots marked on that plat from Jones' lot down the river to the north corner of the Portland

claim or Couche's line, on the east side of Front Street, and that from common conversation of the citizens of Portland (this hearsay evidence objected to by defendants' counsel) and the proprietors of Portland, that the property that I bought on Front Street was front property, and the river bank from Jones' lot to Couche's line, was to be a public landing or levee for the town.

Intr. 3d. State whether you have heard the proprietors of the town or the defendants in this case, or any of them, say anything in reference to this strip of land along the river; if so, state what it was?

(Objected to.)

Ans. I never had a private conversation with any of the proprietors as regards the levee before this suit was commenced; but before this suit was commenced I have heard all of them coincide together with citizens that the levee, if improved and graded down, that it would be such a levee, or resemble the levee in Cincinnati on the Ohio River, and that it would add much to the beauty and growth of the town. It was in the fall of 1847 that I heard these conversations, when I first came in or shortly after.

Intr. 4th. Have you heard Mr. Lownsdale this day say anything in reference to the plat above spoken of which you saw in his possession? if so, state what it is.

Ans. Mr. Lownsdale said he could produce that plat or its copy, pointing to a plat hanging in the room.

The defendants' counsel request the commissioner to enter upon this deposition whether or not the copy named by witness in his last answer, wherein he says, "or its copy, pointing to a plat hanging in the room," is Exhibit (A) heretofore named in these depositions.

(Comp't objects to such entry or certificate of the commissioner.)

The commissioner cannot state anything about it, further than that Exhibit (A) was hanging in the room at the time.

Intr. 5th. Look upon the plat now referred to by defendants' counsel, and called and marked Exhibit (A), and say whether it is or is not a copy of the plat you saw in the possession of Lownsdale, and above referred to by you?

(Objected to.)

Ans. If it is a copy, it has been much enlarged, and that the lots laid off on the plat from Main or Marion Street down the river on the east side of Front Street has been laid off since I saw the former plat. With them exceptions, I have no doubt that it may be a true copy of the plat that I first examined.

Cross-examined by Def'ts.

Intr. 1st. How far north of the south line of the town is the lot of Jones which you have spoken of?

Ans. I think it is a little over the third of the distance of the town claim, north of the south line.

Intr. 2d. Look upon Exhibit (A), is that what Mr. Lownsdale pointed to as hanging in the room as the "copy" stated by you above?

Ans. It is the plat he pointed to.

Re-examined by Comp't.

Intr. 1st. Which way from the Post Office and Times Printing Office building is Jones's lot of which you have spoken?

Ans. South up the river, on a fraction of ground on the east side of Front Street, and on the south side of Main or Marion Street, according to the plat I first examined.

THOS. G. ROBINSON.

TERRITORY OF OREGON,
Washington County, ss.

I do hereby certify that A. L. Lovejoy, D. B. Hanner, Wm. Warren, James Stephens, Sherry Ross, Albert E. Wilson, Wm. M King, John H. Couch, L. Snow, William Seaton Ogden, and Thomas G. Robinson, was by me sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed was reduced to writing by me, and taken at the time and place in the notice specified.

Given under my hand this 28th day of April, A. D. 1852.

ANTHONY L. DAVIS,
Justice of the Peace.

Justice fees, $41.50.
Witness " 21.20.

TERRITORY OF OREGON,
Washington County, ss.

JOSIAH L. PARRISH, Complainant.

vs.

THOMAS STEPHENS, LEONARD HARRIS, ZACHARIAH C. NORTON and A. P. DENNISON, merchants, trading under the name and firm of Norton & Dennison, STEPHEN COFFIN, DANIEL H. LOUNSDALE and W. W. CHAPMAN, Defendants.

District Court of the United States of America for the Second Judicial District of the Territory of Oregon, within and for County of Washington. In Chancery.

To the above named defendants and each and every of you, you and each of you are hereby notified that the testimony of William M. King, who resides in the city of Portland, in said county of Washington, James Stephens, who resides across the Willamette river, opposite Portland aforesaid, and in the county of Clackamas, in said Territory, Gideon Tibbets, who resides in Clackamas county aforesaid, a short distance above, on the island in the Willamette

river, immediately above Portland aforesaid, M. Kinney, who resides Portland aforesaid, Dolphus B. Hanner, who resides at Oregon City aforesaid, Thomas H. Smith, who resides at Milton, in Washington county aforesaid, Francis W. Pettigrove, who resides near Puget Sound, in said Territory, and who formerly resided in Portland aforesaid, A. E. Wilson, who resides at Oregon City aforesaid, William Warren, who resides at Portland aforesaid, Nathan B. Jones, who resides in Washington county aforesaid, and lives on the new road from Portland aforesaid to Tualatin Plains, Thomas G. Robinson, who resides at Portland aforesaid,

is necessary on the part, behalf of the said complainant in the above entitled cause now pending in said Court upon the hearing thereof, and that the depositions of the said persons (whose testimony is above declared to be necessary) to be used upon the hearing of said cause, will be taken by and before Anthony L. Davis, Esq., a Justice of the Peace in and for said county of Washington, at his office in Portland aforesaid, on the 29th day of March, A. D. 1852, at 9 o'clock in the forenoon of said day; and you and each of you are hereby notified to be present at said time and place of taking such depositions and cross-examine said witnesses if you think proper.

JOSIAH L. PARRISH,
Complainant.
By JAMES McCABE,
his Counsel and Attorney.

Dated at Portland, this 28th day of March, A. D. 1852.

TERRITORY OF OREGON,
Washington County.

James McCabe being duly sworn, doth depose and say that on the 26th day of March instant, at the city of Portland, in said county, he served the within notice on those of the within named defendants, to wit, D. H. Lounsdale, Z. C. Norton and Stephen Coffin, by handing to each of them a copy thereof, and informing them severally of the contents of the same, about three o'clock in the afternoon of said day, and that the said Lounsdale, Norton and Coffin reside in said city of Portland, within the distance of about a mile of the office of the within named Davis, as deponent is informed and believes.

JAMES McCABE.

Subscribed and sworn to before me, at the city of Portland, in said county, this 29th day of March, A. D. 1852.

ANTHONY L. DAVIS,
Justice of the Peace.

Endorsed: District Court for the county of Washington. In Chancery. J. L. Parrish, Comp't, *vs.* D. H. Lounsdale *et al.* Notice of the taking of deposition, &c. JAMES McCABE,
At. & Counsel for Compl't.

Deposition of Joseph S. Smith taken in a cause now pending in the United States District Court within and for Washington County, Territory of Oregon, wherein Josiah L. Parrish is complainant, and Thomas Stephens, Leonard Harris, Zachariah C. Norton, and A. P. Dennison, merchants, trading under the name and firm of Norton & Dennison, Stephen Coffin, Daniel H. Lounsdale, and W. W. Chapman, are defendants, at the instance of said complainant in pursuance to a notice to said defendants hereunto appended, and forming part of these proceedings.

Joseph S. Smith, of lawful age, being first duly sworn by me according to law, deposes and says:—

(Questions or interrogatories by J. L. Parrish.)

First. Are you acquainted with the parties in this suit?

Answer. I am acquainted with all the parties named, except Leonard Harris.

Second. Have you formerly resided in the city of Portland, in Washington County, in this Territory?

Answer. I have.

Third. When did you commence residing in Portland?

Answer. Either in December, 1848, or in January, 1849.

Fourth. Do you know about what time J. L. Parrish, the complainant in this cause, purchased block No. 1 of the town of Portland of L. C. Gray?

(Objection by Mr. Lounsdale, acting for the defendants.)

Defendants object to any question being answered to be taken in evidence in this cause, without that answer shall be predicated on a written title, or title in writing.

Answer. I was not present at the purchase of said block or lots. I know that Mr. Parrish came in possession of said property in the month of December, 1849; and further I know that Mr. Gray paid storage to Mr. Parrish on a large number of barrels of flour which were placed in buildings located on said block, and I heard Mr. Gray say that he had sold the property in question, and it was generally understood in the community that Mr. Parrish had bought it. I also rented one of the buildings on the property in question of Mr. Parrish, on the 2d day of January, 1850.

Fifth. Do you know of other persons renting the buildings on said block of J. L. Parrish the complainant?

(Defendant object to this question being answered for cause of irrelevancy, and such answers being given.)

I know that Mr. Thomas Carter rented one of the buildings in question, of Mr. J. L. Parrish.

Sixth. Do you know that the complainant, J. L. Parrish, was in receipt of the rents?

(Objected to by defendants on the same ground as the previous question.)

Answer. I do.

Seventh. Did you ever hear any of the defendants state anything in regard to the public levee at Portland?

(Defendant objects to any question regarding the title of any property or piece of land in the City of Portland, or the claim on which it is situate, without such answer as may be given shall be from the personal knowledge of the witness touching the title to the same, without that title shall have been in writing.)

Answer. I may have heard them speak of the levee; I think I have. I have no distinct recollection of what they said in relation to it.

Eighth. Was it generally understood that all the land east of the west line of Front Street, in Portland, was for public use or a public levy, or was it not?

(Defendant interposes the same objection as to question seventh.)

Answer. I so understood it, and so far as I know it was generally understood. I never heard it doubted or disputed until after Mr. Norton purchased lots of Mr. Coffin, on that ground, in the spring of 1850.

The defendants not waiving their objection previously made, cross-examined.

As to answer to question fourth. You refer to the purchase of J. L. Parrish from L. C. Gray; have you ever seen any title in writing from said Gray to said Parrish, and if so please state the nature of that title? (Objected to by complainant.)

Answer. I have never seen any such title.

As to eighth question. In your answer to the eighth question, do you mean to be understood as that you obtained that impression from the title to any lots, or was it from rumor, or otherwise?

(Objected to by the complainant.)

Answer. I cannot state positively as to how my impression were obtained. I remember to have read a title to lots on Front Street, which to the best of my recollection were in the deed called water lots, though of this I am not absolutely certain.

Question. To whom was that deed given, and by whom?

(Objected to by complainant.)

Answer. It was a deed to the lots on Front Street, owned by Thomas Carter; it has been so long I do not recollect who gave it, or to whom it was given, whether it was the original deed from F. W. Pettigrove to Jobe McName, or a deed from said McName to Thomas Carter, then in the possession of Thomas Carter.

Question. Do you know anything or not of a certain wharf on this tract of land in dispute; if so, where was it situated?

(Objected to by the plaintiff.)

Answer. There was a wharf connected with the piece of ground in dispute, extending some distance into the river. It was situated nearly east, or at the foot of the street running west from the river north of block No. 1.

Question. Do you recollect whether the said wharf was or was not as much as 60 feet southward from Coffin's building, now situate on or near the bank of the river?

(Objected to by complainant.)

Answer. I cannot be positive as to the distance, but think it is not far one way or the other from 60 feet.

Question. Do you know anything as regards the width of that street referred to, or do you not?

Answer. I do not know the exact width, probably 60 feet.

Question. Do you know of any building east of the west line of Front Street, that was erected on or near the bank of the river; if so, who resided or occupied them on your first residence in Portland?

(Objected to by the complainant.)

Answer. There was two buildings within the bounds described in the question. One was a slaughter-house, so called, occupied by Capt. Crosby as a warehouse, the other a cabin, occupied by Mr. Jones.

Question. Do you know whether these buildings have or have not been occupied as such, described by you up to the present; and whether the houses designated as the old slaughter-house has not had a sign indicating that the house was kept for storing goods?

(Objected to by complainant.)

Answer. When I was last at Portland those buildings were standing. I do not know whether they were occupied or not.

Examination in chief continued.

Question ninth. If you know, state where the slaughter-house you referred to stood.

Answer. It stood on the bend of the Willamette River, two squares or thereabouts north of the block No. 1.

Question 10th. Have you or have you not heard Mr. Lownsdale state, in the winter or spring of 1850, that the wharf to which you referred was a public wharf, or public property?

(Objected to by the defendant.)

Answer. I cannot say that I have. I may have heard it, but cannot say positively that I have.

Question 11th. Was it, or was it not used as a public wharf, free for the use of all?

(Defendant object to this question being answered for cause of irrelevancy.)

Answer. It was used by the public. I do not know that any charge was ever made for the use of it; but I do know that in some cases it was used without any charge.

Question 12. The cabin to which you referred as occupied by Mr. Jones—state where it stands or did stand, whether above or below the Times printing-office and post-office in Portland?

Answer. It did stand on the bank of the Willamette, nearly in front of what are known as the Caruther's buildings. It was above

the buildings in which the Times' Printing Office and Post Office were kept.

Question 13. Do you or do you not know that the lots on the west line of Front St. were called, by the proprietors of the town, front or water lots, and sold as such?

(Defendant object generally to this question being answered, and specially, unless the title shall be shown, and that in writing.)

Answer. I cannot say that they were or were not sold as such, but in common conversation, both by the proprietors and others, they were styled front lots.

Question 14. Do you or do you not recollect of seeing the town plat, as exhibited by the proprietors, in the winter and spring of 1850?

(Defendants object to this question being answered without the plat referred to being exhibited, or a copy of the same.)

Answer. I have seen a plat of the town of Portland, previous to the winter and spring of 1850, but do not know that it was exhibited as such at the time.

Question 15. Was or was not the whole front open on said plat from the west line of Front Street to the water's edge?

(Defendants object, as before, without the exhibition of the plat referred to, or its copy.)

Answer. It was open entirely.

Cross-examined as to the last question, No. 15, and answer to the same, not waiving the objection to the same as entered.

Question. Do you believe you could recognize the plat referred to if produced?

Answer. I should know the plat from any other which was not nearly an exact copy of it.

Question. Would that recognition be from any known marks on the same, with regard to streets, blocks, and lots, as now recollected by you?

Answer. When I saw the plat in question, I observed it carefully, with a view to make a selection of lots on which to build a church. The outlines of the plan, and its relations to the river, I distinctly recollect, and should know the plat from any other that differed materially from it.

Question. Do you or do you not know in what direction the blocks are numbered, beginning at block No. 1, as referred to?

Answer. I do not know in what direction.

Question. Do you not know that the church lots spoken of, selected by you, in the block on the Methodist Episcopal church now stands, was numbered 24 or 23? And what direction does it stand, either southward or northward of the block referred to in the question of purchase by J. L. Parrish, and called No. 1?

Answer. I cannot say whether it was 23, or 24, or some other number. Its direction is southward.

J. S. SMITH.

UNITED STATES OF AMERICA,
Territory of Oregon, Marion County, ss:

I, L. F. Grover, Master Commissioner in Chancery within and for the County of Marion aforesaid, do hereby certify that Joseph S. Smith was by me sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed was reduced to writing by me, and taken at the time and place in the notice specified.

L. F. GROVER,
Master Com. &c.

TERRITORY OF OREGON,
Washington County, ss.

District Court of the United States of America for the Second Judicial District of the Territory of Oregon, within and for the County of Washington.

In Chancery.

JOSIAH L. PARRISH, Complainant,
vs.
THOMAS STEVENS, LEONARD HARRIS, ZACHARIAH C. NORTON, and A. P. DENNISON, Merchants, trading under the name and firm of Norton & Dennison, STEPHEN COFFIN, DANIEL H. LOWNSDALE, W. W. CHAPMAN, Defendants.

To the above named defendants, and each and every of you: You and each of you are hereby notified that the testimony of William Cox, who resides in Salem, in the county of Marion, in said Territory; F. Crump, who resides in Salem aforesaid; Joseph S. Smith, who resides in said county of Marion, some three, four, or five miles from Salem aforesaid,

is necessary on the part and behalf of the said complainant in the above entitled cause now pending in said court, upon the hearing thereof; and that the depositions of the said persons (whose testimony is above declared to be necessary) to be read on the hearing of said cause, will be taken by and before La Fayett Grover, Master Commissioner in Chancery in and for said county of Marion, at his said Grover's office at Salem aforesaid, on the tenth day of April instant, at 9 o'clock in the forenoon of that day; and you and each of you are hereby notified to be present at said time and place of taking such depositions, and cross-examine said witnesses if you think proper.

JOSIAH L. PARRISH,
Complainant.
By JAMES McCABE,
his Counsel and Attorney.

Dated at Portland, this 5th day of April, A. D. 1852.

TERRITORY OF OREGON,
Washington County, ss.

District Court for Washington County, in Chancery.

J. L. PARRISH, Complainant,
vs.
D. H. LOWNSDALE *et al.*

Notice for the taking Depositions, &c.

W. H. Backus, of said county, being duly sworn, doth depose and say, that on the 5th day of April instant, at the city of Portland, in said county, he served the within notice on three of the within named defendants, to wit, Lownsdale, Coffin, and Norton, by handing to each of them a copy thereof.

W. H. BACKUS,

Subscribed and sworn to before me, at Portland, in said county, this 5th day of April, A. D. 1852.

ANTHONY L. DAVIS,
Justice of the Peace.

Endorsed: Deposition of Joseph S. Smith. J. L. Parrish *vs.* Lownsdale *et al.* Master Com's fees $7 10. Rec'd pay't of J. L. Parrish.

L. F. GROVER, *M. C.*

Rec'd May 4th, 1852; opened and filed Dec. 1st, 1853.

R. WILCOX, *Clerk.*

J. L. PARRISH
vs.
THOMAS STEVENS, LEONARD HARRIS, ZACHARIAH C. NORTON, and A. P. DENNISON, trading under the name and firm of Norton & Dennison, STEPHEN COFFIN, DANIEL H. LOWNSDALE, and W. W. CHAPMAN.

In Chancery. Washington County District Court.

Deposition of witnesses produced, sworn, and examined in the above entitled cause now pending in said court, taken on the part of said defendants, before me, Anthony L. Davis, a justice of the peace in and for said county, at my office in the city of Portland, and in said county, on the 31st day of March, A. D. 1852, notice thereof being waived by said complainant.

Alonzo Leland was introduced as a witness on the part of the defendants, notice waived, was duly sworn, says:—

Int'r. 1st. What is your occupation, and where have you resided for one year past?

Ans. I have resided in Portland a part of the time; I have acted as a surveyor.

Int'r. Do you know the store now occupied by L. Snow? and can

you state on what block and lot, and on what part of it that store is situate?

Ans. I do know the store now occupied by Mr. Snow; it is situated on block No. one, lot No. one, on the northeast corner, as represented by the plat of Portland.

Int'r. How do you know this?

Ans. I measured the distance from the N. E. corner of said lot number one, in a direct line on the west side of Front Street to the north line of the Portland claim, and found it to be fourteen hundred and seventy-eight feet (1,478), which, according to the portionment of the town plot, would give the width of six streets, and the front of five blocks, and one hundred and eighteen feet on the sixth block.

(The complainant's counsel objects to the above question and answer, after the answer was given.)

Int'r. Look upon the exhibit (A), now shown you, and state whether that lot and block (No. 1) one, are thereon correctly designated or not, and whether that exhibit is or is not a correct plat of said town of Portland.

(Objected to by complainant's counsel on account of irrelevancy, and further object to the introduction of the plot called exhibit (A) in the above question.)

Ans. If the line represented to be the north line between this claim and Couch's claim be the correct one, the distance from block number one on this plat to said north line exceeds the actual measurement by about ten feet, in other respects it is nearly in accordance with the survey.

Int'r. Do you know whether or not the N. E. corner of L. Snow's store south of Washington Street, and on the west side of Front Street, is the corner designated as the N. E. corner of block number one as designated on Exhibit (A) aforesaid?

(Objected to by complainants.)

Ans. I have always understood it to be so, and all surveys which I have made in the town have been made regarding said store as situated on block number one in the N. E. corner.

ALONZO LELAND.

TERRITORY OF OREGON,
Washington County, ss.

I, Anthony L. Davis, a Justice of the Peace, in and for said County, do hereby certify, that Alonzo Leland was by me sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed was reduced to writing by me at the time and place specified, and that notice was waived.

Given under my hand this 1st day of May, A. D. 1852.

ANTHONY L. DAVIS,
Justice of the Peace.

Justice fees, $2 50
Witness " 1 00

Endorsed: Deposition: Parrish *vs.* Stevens *et al.* Rec'd May 4th, 1852. Opened and filed Dec. 1st, 1853.

R. WILCOX,
Clerk.

J. L. PARRISH
vs.
THOMAS STEPHENS, LEONARD HARRIS, Z. C. NORTON, A. P. DENNISON, trading under the firm name of NORTON & DENNISON, STEPHEN COFFIN, D. H. LOWNSDALE, and W. W. CHAPMAN.

In Chancery. In the Washington District Court.

The deposition of Capt. Andrew Williams, produced by consent of the parties to testify on the part of the plaintiff in the above entitled cause, now pending in said Court. Taken at the office of A. C. Bonnell, Mayor of the City of Portland, in said County, on the first day of May, A. D. 1852, between the hours of nine o'clock A. M., and 6 o'clock P. M. of said day.

Andrew Williams was introduced on the part of the plaintiff, and was duly sworn.

Quest. 1. Do you know D. H. Lownsdale, Thomas H. Smith, Capt. Nath'l Crosby, Jr.?

Ans. Yes, I do know them.

Quest. 2. Did you ever hear a conversation between them relative to the ground, or any portion thereof along the river bank in front of Portland? If so, state the conversation.

Ans. No; I never heard a conversation between Lownsdale & Smith, but I heard Mr. Lownsdale say it was a reserve. At that time there was a deed drawn up by Thomas H. Smith for Lownsdale to sign, which Lownsdale would not sign; he afterwards told me he was not going to sign any of Tom Smith's quibbling deeds. The deed was for a lot of land conveying to Crosby & Smith a lot of land on the levee.

Quest. 3. What, if anything, did you hear Lownsdale say in reference to this land along the river bank being public property, about the time Coffin was digging here, and preparing to put up this large building on the river?

(Question objected to by counsel for def'ts.)

Ans. Well, my memory is not very correct, but as near as I can recollect, Mr. Lownsdale said he would stop him from putting up the building; that the injunction business was not stopped yet. That the whole of the levee was a reserve, but he did not say for what purpose, or anything of the kind.

Quest. What, if anything, have you heard Mr. Coffin say in reference to the same subject?

Ans. That it was private property.

Quest. What was the general understanding and reputation in this community in reference to this being public property? (Objected to by def'ts' counsel.)

Ans. A portion of the people supposed it to be public property. I was persuaded not to buy for that reason.

Quest. What portion of the community so understood it to be public property?

Ans. I could not say as to that, the division appeared to be according to their interest.

A. W. WILLIAMS.

TERRITORY OF OREGON,
Washington County, ss.

I, A. C. Bonnell, Mayor of the City of Portland, in said county, do hereby certify, that Andrew Williams was by me sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed was reduced to writing by myself, and taken at the time and place as first above specified.

A. C. BONNELL,
Mayor.

May 1, 1852.

Endorsed: Deposition J. L. Parrish *vs.* Thomas Stevens, Leonard Harris, Z. G. Norton, and A. P. Dennison, trading under the name and firm of Norton and Dennison, Stephen Coffin, D. H. Lownsdale, and W. W. Chapman.

Washington District Court. Rec'd May 4th, 1852, opened and filed Dec. 1st., 1853.

R. WILCOX,
Clerk.

Mayor's fees $1.50, paid by plaintiff.

J. L. PARRISH,
vs.
THOMAS STEPHENS, LEONARD HARRIS, Z. C. NORTON, A. P. DENNISON, merchants trading the name and firm of NORTON and DENNISON, STEPHEN COFFIN, D. H. LOWNSDALE, and W. W. CHAPMAN.

In Chancery. Washington District Court.

The deposition of witnesses produced on behalf of defendant D. H. Lownsdale, sworn and examined in the above entitled cause now pending in said Court. Taken at the office of A. C. Bonnell, Mayor of the City of Portland, in said county, on the 1st day of May, A. D. 1852, between the hours of nine o'clock A. M. and six o'clock P. M. of said day, by consent of the parties.

The said witnesses being first duly sworn by me, in answer to the following interrogatories, respectively deposed and said as follows:

Thomas Carter was introduced and duly sworn, says, sworn on his *voir dire.*

1 Question. How long have you resided in Portland?

Ans. I came in here in the spring of 1848, and have resided here ever since, except 5 or 6 months residence at La Fayette.

2 Question. Do you own property on Front Street in this city?

Ans. Yes.

3 Question. Of whom did you purchase?

Ans. I purchased the first property of Job McName, the second of D. H. Lownsdale.

4 Question. Have you not recently purchased property running down to the water, of Lownsdale?

Ans. I have of young Lownsdale, the son of D. H. Lownsdale. The property lying in front of the present post-office building, and running down to the river at low water.

5 Question. How many lots do you own on Front street running down to the water's edge?

Ans. Only one, also one which block above the mills; I have always held a claim to the ground in front of the property I bought of McName from inducements held by the original proprietors, that I should have the first offer of it, whether at a charge or as a gift I cannot say.

6 Question. If a decree in Chancery should be made throwing open the lands in front of the river here, in accordance with the prayer of the bill in this case, your lot would be included in those lands, would it not?

Ans. It would.

Cross-examined.

7 Question. How many lots do you own on the western side of Front Street, and do you own any others in that vicinity, the value of which would be affected by the opening of the lands in front of said river?

Answer. I own three immediately on Front Street, two of them known as the Columbia Hotel property, and the other one bought of Maclamee.

8 Question. State the particulars of the terms of purchase of the lots bought of young Lownsdale.

(Objected to by counsel for pl'ff.)

Ans. The lots I purchased from him at $1000, for which I paid him, and he gave me his father as security, if he could not make the title good, that he should refund me the money back with interest at ten per cent.

9 Question. Would you either gain or lose by the event of this suit?

(Objected to by counsel for p't'ff.)

Ans. I do not think I should make or lose one dollar. That is my candid opinion. It is just the way the thing stands with me.

10 Question. Do you know how far the lots were laid by Pettigrove towards the south, and were any laid out so far south as the block you own above the mills?

(Objected to by counsel for p't'ff.)

Ans. I couldn't tell whether it was laid out by Pettigrove or not.

11 Quest. Does that block extend to the water's edge?

Ans. It does not at low water; at high water it may.

(Re-examination by Counsel for P't'ff.)

12 Question. Would you not rather have a title for the lots bought of young Lownsdale than to have the obligation which you hold and the ten per cent.?

Ans. I rather think I should.

13 Question by counsel for defendant Lownsdale. Would not your other property on Front Street be enhanced in value by the land in front being thrown open?

(Counsel for p't'ff objects to this question on the ground that the examination is legally closed.)

Ans. I should think it would.

Proposal to swear the witness in chief objected by plaintiff's counsel on the ground of his being interested in the result of this suit.

Witness sworn in chief.

Quest. 1. Do you know F. W. Pettigrove, Job Maclamee, and D. H. Lownsdale?

Ans. Yes.

Quest. 2. Did you at any time, and when, purchase a lot of land in Portland, and where, from Pettigrove or Maclamee?

Ans. I purchased two lots in the latter day of February, '48, from MacNamee, Lots No. 1 and 8, in Block No. 2, corner of Alder and Front Streets.

Quest. 3. Who was the then proprietor or proprietors of the Town of Portland?

Ans. It was then said Pettigrove and Stark were the owners.

Quest. 4. At or about the time of your said purchase had you any conversation with said Pettigrove respecting the lands along the bank of the river in Portland, and why did you, if at all, speak to him on that subject?

(Question waived for the moment.)

Quest. 5. Who, if any one, was in possession of the Town of Portland, or claiming to hold it as proprietors at that time?

Ans. Franklin Pettigrove and Stark was then said to be the proprietors. Pettigrove was living here at that time, and he claimed to hold the ownership as joint property with Stark, and always so claimed to hold it.

Ans. to Question 4. (Objected to by Counsel for p't'ff.) I felt somewhat interested in getting the property which laid in front of the property I bought of MacNamee. He, Pettigrove, held out the inducement to me that I should have the refusal of it, either by gift or purchase. Mr. Pettigrove and me was standing, at another time, at the end of the old wharf, and talking about the property in

the Town of Portland. He observed that that property immediately in front some day would make him a fortune. He held out the idea that he did not intend to sell any property on the front for some time. This conversation took place some time in the summer of '48.

Quest. 6. Do you know of any acts of ownership by building upon, preventing trespasses upon, or otherways, exercised by Pettigrove on said lands along the river in Portland?

Ans. I know of his building a wharf on the south side of Washington Street, opposite to Lot No. 1 in Block No. 1; also of his owning a slaughter-house, built or standing near the bank of the river, nearly in front of the Warren House. It was used as a warehouse and for storage. The wharf he used frequently for various purposes, but whether he charged wharfage or not I am not certain, but think on one occasion he had a dispute with Capt. Dring about his charging too much wharfage.

Quest. 7. Do you know of any lots having been sold by any of the town proprietors, and which of them, east of Front Street, above the post office, and when, and to whom?

(Objected to by council for pl'f.)

Ans. I believe there was some lots sold above the P. office, one to Mathew Patton, and one to Jones, by the present proprietors. Jones' was bought about the fall of '48, sold to him by Lounsdale because he had it in his possession that fall. Mathew Patton's was sold—I am not able to tell—but it strikes me it was bought of Mr. Coffin.

Quest. 8. Do you know who, if any one, came into possession of said town as proprietors after Pettigrove, and about what time, and how?

(Objected to by ptff's council.)

Ans. D. H. Lounsdale came into possession by purchase of F. W. Pettigrove, it was in the summer or fall of '48.

Cross-examined by P'tf's Council.

Quest. 1. Who, if any one, was present at the time Pettigrove said that he would make a fortune out of the land along the river bank, eventually?

Ans. No one but myself.

Quest. 2. When was this?

Ans. In the summer or fall of '48; I can't recollect exactly the time, before he sold out.

Quest. 3. Have you not heard Mr. Pettigrove say that the front was public property?

Ans. I have.

Quest. 4. Have you often heard him say this?

Ans. I never heard him say it but once, when he was in a little pet after he had sold.

Quest. 5. Have you not heard Mr. Lounsdale say that these lands along the river bank, in front of Portland, is public property?

Ans. I believe, if I recollect right, I was the first who suggested to Mr. Lounsdale about the lands being thrown open. After looking at it awhile, either that day or the next, he concluded it would be an advantage to the place to have it open, and that he would try to make arrangements to that effect. I believe this was the sum and substance of it.

Question 6. Have you not heard Mr. Lounsdale say directly that he designed to have this an open front?

Ans. Well, he never answered directly that he intended to do so, but there was some little obstacle in the way. He always acted as though he intended to do so. He wished to make some arrangements with the proprietors so that each one might lose his proportion.

Quest. 7. Did you not hear Mr. Lounsdale say that unless Parrish continued on with his injunction, he himself would lay an injunction upon the public levee here, to stop the progress of this building of Coffin's?

Ans. I cannot answer this directly. It appeared to be a contract respecting this piece of land between him and Coffin. I don't know that I heard him say he would lay an injunction or not; but he appeared to be much dissatisfied with this building going on, for he himself, under contract with Coffin, claimed to have a right to this piece of land, in a settlement some way with Coffin.

THOMAS CARTER.

TERRITORY OF OREGON,
Washington County, ss:

I, A. C. Bonnell, Mayor of the City of Portland, in said county, do hereby certify that Thomas Carter was by me sworn to testify the truth, the whole truth, and nothing but the truth, and that the deposition by him subscribed was reduced to writing by myself, and taken at the time and place a first specified.

A. C. BONNELL,
Mayor.

May 1st, 1852.

Endorsed: No. 12. Filed 9th May, 1857. Deposition. J. L. Parrish *vs.* Thomas Stephens, Leonard Harris, Z. C. Norton, and A. P. Dennison, merchants, trading under the name and firm of Norton & Dennison, Stephen Coffin, D. H. Lounsdale, and W. W. Chapman. Washington District Court. Rec'd July 10th, 1852, opened and filed Dec. 1st, 1853.

R. WILCOX,
Clerk.

Mayor's fees, $4 50. Paid by D. H. Lounsdale.

JOSIAH L. PARRISH, Compt.,
vs.
DANIEL H. LOWNSDALE *et al.*,
Defendants.

In Chancery.

U. S. DISTRICT COURT.

Second Judicial District, Washington County, Oregon Territory.

The deposition of Francis W. Pettygrove, a witness produced on the part of Daniel H. Lownsdale, one of the defendants in the above entitled case, to be used in said cause now pending in said Court. Sworn, examined, and taken at the office of A. C. Bonnell, Mayor of the city of Portland in said County, at Portland, on the 22d, day of July, A.D. 1852, between the hours of 8 o'clock A. M. and six o'clock P. M. of said day, pursuant to the notice annexed.

F. W. Pettygrove being first duly sworn, deposeth and said as follows, in answer to the following interrogatories respectively—sworn first on his voir dire.

Interrog. Do you own any real estate, or have you any right or title to any in this town?

Ans. I do not.

Interrog. Is there not an agreement, between you and some of the proprietors of this town, that they will make to you a title, or transfer to some of the property in this town?

Ans. There is none.

Interrog. Have you any interest in the event of this suit?

Ans. I have none.

Sworn in chief.

Interrog. 1. Do you know the parties to this suit?

Ans. A part of them. I know Daniel H. Lownsdale, and J. L. Parrish.

Interrog. 2. Will you state what you know about the first laying out of the town of Portland, by whom, and how it was laid out, and by whom and when the first sales were made.

Ans. It was laid out by Pettygrove and Lovejoy in the year 1845, and surveyed by Thomas A. Brown. The size of the lots were 50 by 100 feet.—The street 60 feet in width, with the exception of the street called Front street, that was 60 feet wide with the exception of in front of Blocks No. 4 and 5, there it was some 30 or 35 feet wide, as will be seen by the original plat. The first lot was sold in 1846, by Pettygrove and Stark.

Interrog. 3. Will you state if you have seen a true copy of the first plat, in the hands of any person, since October last, and where it was, and why you noticed it? (Objected to by counsel for complainant.)

Ans. I have. I saw it in this office in the hands of Mr. Lownsdale,

and of the Mayor of Portland. I then examined it myself. It was at the time I was giving in my deposition, in this same case, and that was the reason I noticed and examined it.

Interrog. 4. Was there a request made to the commissioner by the deft., D. H. Lownsdale, for the said copy to be filed by the said Mayor, as evidence in this case? (Objected to by counsel for compt.)

Ans. There was.

Interr'y 5. Is the lots and blocks numbered on said copy, and where does No. 1 begin, and do they read northward or southward from No. one, or in what direction?

(Objected to by counsel for compl't.)

Ans. The blocks and lots were numbered; block No. one is that on the corner of which Lucin Snow is now doing business, in a building built by myself, the blocks number or read southwardly.

Interr'y 6. Did you sell to D. H. Lownsdale, or any other person in 1848, the right to the claim and improvements thereon?

(Objected to by counsel for compl't.)

Ans. In 1848 I sold all my right and title to the Portland land claim to Daniel H. Lownsdale, including the wharf built in front of block No. 1 on the river's bank; the dwelling house now attached to the Columbian Hotel, and a slaughter house on the bank of the river east of Front Street.

Interr'y 7. How was that slaughter house used, and whether at any time it was or was not used for storage?

Ans. It was used by me as a slaughter house, and also for a store room; I at one time stored in it part of a cargo of salt.

Interr'y 8. By whom was the wharf you spoke of built, and by whom used, up to the time of your sale to D. H. Lownsdale?

Ans. By myself.

Cross-examined.

Interr'y 1. Was not the wharf you have spoken of, used by others, as well as yourself?

Ans. Certainly—when vessels come in and discharged cargo, they used the wharf and paid for it.

Interr'y 2. Did you make to Mr. Lownsdale a deed for the property you sold him?

Ans. I made to Mr. Lownsdale an instrument of writing, transferring to him all my right and title to the Portland claim, whether it was a deed, or what kind of legal instrument, I cannot now tell.

Interr'y 3. Was there any covenants in that instrument of transfer, whereby you warranted the title against any others?

Ans. Not to my knowledge.

Interr'y 4. Was this paper a sealed instrument?

Ans. It was, to the best of my knowledge. It was done to the best of my knowledge, in the month of October, 1848.

Interr'y 5. Have you not more than once said to a crowd of

people in Portland, that this property east of Front Street, next the river, was intended as public property?

Ans. No, sir. Not to my knowledge.

Interr'y 6. Have you never said so to any person?

Ans. Not to my knowledge. I might perhaps when in a pet, or under the influence of intoxicating drink, have said so—but never to my knowledge when cool, have I told any person I so intended it.

Interr'y 7. Have you not recently said in reference to this case, that if you swore for Lownsdale and them other fellows, that you had got to be well paid for it?

Ans. I did say that I should be well paid for any trouble and expense in coming over from Puget's Sound to testify.

Interr'y 8. In reference to the lands between the river and Front Street, was it at the time laid off into blocks and lots?

Ans. It was not by me.

Interr'y 9. Did you not tell A. E. Wilson at one time, when he called on you to purchase lots, that the lots along the river, between that and Front Street was not for sale, but were public property?

Ans. Not to my knowledge, I do not recollect of ever telling him any such thing.

Interr'y 10. Did you not tell A. E. Wilson, at the time when he was talking with you about purchasing lots on the west side of Front Street, and having property when there would be buildings in front of it, and objected among other things to the slaughter house on the bank. Did you not tell him that the slaughter house was a mere temporary matter to be removed soon, and that the whole space along the line of the river was to remain open, and not to be built upon?

Ans. In the first place, I do not recollect that A. E. Wilson ever tried to purchase any lots of me; and, in the next place, I do not recollect of ever having said anything to him in regard to it.

Re-ex. by Mr. Lonsdale.

Interr'y. Did he purchase any lots opposite to the slaughter house from you?

Ans. He did not, nor of any other person up to the fall of 1848, to my knowledge.

F. W. PETTYGROVE.

TERRITORY OF OREGON,
Washington County, City of Portland, ss:

I, A. C. Bonnell, Mayor of the City of Portland in said county, do hereby certify that Francis W. Pettygrove was by me sworn to testify the truth, the whole truth, and nothing but the truth—and

that this deposition by him subscribed, was reduced to writing by myself, and taken at the time and place in the notice specified.

Given under my hand this 22d day of July, 1852.

A. C. BONNELL,
Mayor of Portland.

TERRITORY OF OREGON,
Washington County, City of Portland, ss:

I, A. C. Bonnell, Mayor of the City of Portland in said county, do hereby certify that the deposition and copy of the original town plat referred to on F. W. Pettygrove's answer to the 3d interrogatory in chief of this deposition, was by me sealed up and delivered to R. Wilcox, Esq., Clerk of the Washington County District Court, some time since.

A. C. BONNELL,
Mayor of Portland.

July 22, 1852.

DISTRICT COURT OF THE UNITED STATES,
Within and for the County of Washington.

In Vacation, after May Term, A. D. 1852.

JOSIAH L. PARRISH, Complainant,
vs.
DANIEL H. LOWNSDALE, implicated with STEPHEN COFFIN, WILLIAM W. CHAPMAN *et al.*, Defendants.

In Chancery.

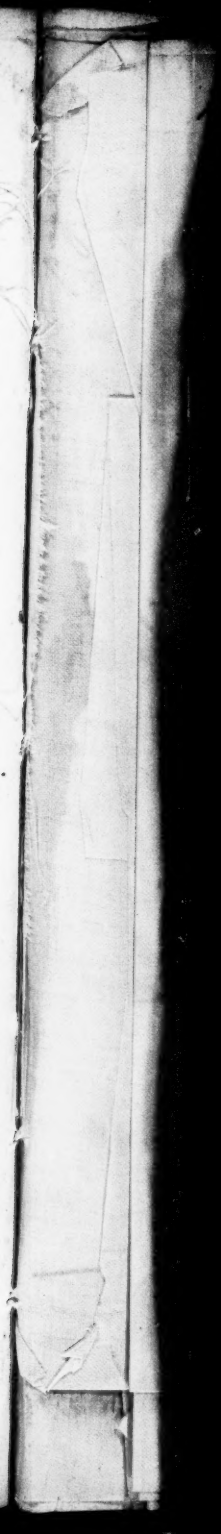
To Josiah L. Parrish, said comp't, his solicitors, counsel, and agents.

Take notice, that the deposition of Francis W. Pettigrove will be taken before Allen P. Millar, Esq., a Master Commissioner in Chancery, within and for the County of Clackamas, in the Territory of Oregon, at his office in Oregon City, in said County of Clackamas, on the twenty-second day of July instant, at eight o'clock A. M., for the purpose of being used in evidence, on the part of the said Daniel H. Lownsdale, on the hearing of said cause, at which time and place you can attend, and put interrogatories to the said Pettigrove, if you think proper. The said Francis W. Pettigrove is not a resident of said County of Washington, and although he will be present at the time and place above specified, yet he intends to return to his present place of residence in Thurston County, in said Territory, before the hearing of this cause; for which reason, and because the testimony of the said Pettygrove is material and necessary in said cause, the deposition of the said Pettygrove is sought to be taken.

Yours respectfully,

DANIEL H. LOWNSDALE,
Defendant imp'd as aforesaid.

OREGON CITY, *July 20th*, 1852.



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I hereby acknowledge service upon me this day of a motion, of which the above is a duplicate copy.

JAMES McCABE,
Solicitor for Josiah L. Parrish,
said complainant.

OREGON CITY, *July* 20*th*, 1852.

For the mutual convenience of the above named Josiah L. Parrish and Daniel H. Lownsdale, it is hereby stipulated and agreed by and between James McCabe, Esq., sol'r for compl't, and A. E. Wait, sol'r for said def't Lownsdale, that the deposition of the said Francis W. Pettygrove may be taken before A. C. Bonnell, Esq., Mayor of Portland, in said County of Washington; or in his absence, before one A. Davis, Esq., Justice of the Peace in and for said county, at such place as they may find convenient in Portland aforesaid, at the same time and with like effect as though the same had been taken agreeable to the foregoing notice.

JAMES McCABE, *Sol'r, &c.*
A. E. WAIT, *Sol'r, &c.*

Endorsed: District Court, Washington County. In Chancery. Josiah L. Parrish, comp't, *vs.* Daniel H. Lownsdale, imp'd, with Stephen Coffin *et al.*, defendants. Notice to take depositions.